Third Series, Vol. LXII No. 23

Saturday, December 3, 1966
Agrahayana 12, 1888 (Saka)

LOK SABHA DEBATES

Sixteenth Session

सत्यमेव जयते

LOK SABHA SECRETARIAT
New Delhi

CONTENTS

No. 23.—Saturday, December 3, 1966/Agrahayana 12, 1888 (Saka)

COLUMNS

Re. Short Notice Questions 7163, 7168-69

Calling Attention to Matter of Urgent Public Importance—

Restriction on movement of foodgrains and decrease of quantum of ration in Andhra Pradesh . . . . . 7164—67

Oral Answer to Question —

Short Notice Question No. 7 . . 7169—72

Written Answer to Question—

Short Notice Question No. 6 7173

Re. Calling Attention Notice (*Query*) . . . 7174—79

Question of Privilege against Shri Madhu Limaye . 7179—99

Papers laid on the Table . . . . . 7199—7201

Committee on Subordinate Legislation—

Minutes 7201

Messages from Rajya Sabha . . . . 7201—03

Resignation by Member—(*Shri Luxmi Dass*) 7203

Committee on Subordinate Legislation —

Sixth Report 7203

Estimates Committee—

Hundred and eighth Report 7204

Indian Tariff (Second Amendment) Bill . . . . 7204—27

Motion to consider . . . . . 7204—27

Shri Manubhai Shah . . . . 7204—06, 7224—26

Shri Sham Lal Saraf . . . . . 7206—09

Shri Ranga 7209-10

Shri D.C. Sharma . . . . . 7210—12

Shri Sivamurthi Swamy . . . . . 7212—14

Shri H.C. Linga Reddy . . . . . 7214—17

Shri H.C. Soy 7217-18

Shri V.B. Gandhi . . . . . 7218—20

Shri Narendra Singh Mahida 7220-21

Shri Sonavane 7221-22

Shri C.R. Basappa . . . . . 7222—24

Clauses 2 and [illegible] 7226

Motion to Pass 7226

Shri Sham Lal Saraf 7227

Shri Manubhai Shah 7227

COLUMNS

Statutory Resolution under Indian Tariff Act—*adopted* . . . 7227—33
Shri Manubhai Shah 7227, 7231-32
Shri Narendra Singh Mahida 7227-28
Shrimati Savitri Nigam 7228-29
Shri Sonavane 7229
Shri Tulsidas Jadhav 7230
Shri D.D. Puri 7230

Constitution (Twenty-third Amendment) Bill . 7233—70, 7272—7334

Motion to consider . . . 7233—70, 7272—7334
Shri G.S. Pathak . . . . 7233—44, 7309—13
Shri Nath Pai . . . . . 7247—57
Shri Joachim Alva . . . . . 7257—66
Shri Sarjoo Pandey . . . . . 7266—69
Dr. L.M. Singhvi . . . . 7269-70, 7272—74
Shri G.N. Dixit . . . . . 7274—79
Shri N.C. Chatterjee . . . . . 7279—85
Shri Narendra Singh Mahida . . . . . 7285—88
Shri Nambiar . . . . . 7288—91
Shri A.N. Vidyalankar . . . . . 7291—93
Shri Bade . . . . . 7293—97
Shri K.C. Sharma . . . . . 7297—7300
Shri Madhu Limaye . . . . . 7300—04
Shri Sheo Narain . . . . . 7304—06
Shri S.M. Banerjee . . . . . 7307—09

Clause 2 and 1. . . . . 7314—23

Motion to Pass, as amended: 7323
Shri Nath Pai . . . . . 7323—26
Shri Nambiar 7326
Shri Ram Sewak Yadav . . . . . 7326—28
Shri Bade . . . . . 7328—30
Shri G.S. Pathak 7330

Statement *Re.* Resignation of Ministers of Goa, Daman and Diu, dissolution of Legislative Assembly and Presidential Order thereon . 7334-35

Statement *Re.* Raw Cotton Supply Situation :
Shri Manubhai Shah 7271-72

Post-Graduate Institute of Medical Education and Research, Chandigarh Bill : . . . 7335—65

Motion to consider, as passed by Rajya Sabha . . . 7335—65
Shri B.S. Murthy . . . . . 7335—39
Shri D.C. Sharma . . . . . 7340—45
Shri Bade . . . . . 7345—49
Dr. Chandra Bhan Singh . . . . . 7349—52
Shri A.N. Vidyalankar . . . . . 7352—56
Shri B.V. Gandhi 7356-57
Shri D.D. Puri . . . . . 7358—60
Dr. Melkote . . . . . 7360—65
Shri Balmiki 7365

Half-an-hour Discussion *Re.* Pay Scales of Teachers. . 7365-66
Shri Prakash Vir Shastri 7365-66

LOK SABHA

Saturday, December 3, 1966/ Agrahayana 12, 1888 (Saka)

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

RE: SHORT NOTICE QUESTIONS

Mr. Speaker: Short notice questions. Shri Madhu Limaye..... Absent; Dr. Lohia....Absent. Then, Calling-attention notice — Professor Ranga.

Shrimati Tarkeshwari Sinha: I am here, Sir.

An hon. Member: There is another short notice question.

Mr. Speaker: I am sorry. Shrimati Tarkeshwari Sinha.

Shrimati Tarkeshwari Sinha: No. 7. The Minister is not here, Sir.

Mr. Speaker: The Minister is not here. Then, I will take it up when the Minister comes.

Shri S. M. Banerjee: Then, you should allow Shri Madhu Limaye also.

Mr. Speaker: No

Shri S. M. Banerjee: He is not present just as the Minister is not present.

Mr. Speaker: No, please.

11.01 hrs.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

RESTRICTION ON MOVEMENT OF FOODGRAINS AND DECREASE OF RATION IN ANDHRA PRADESH

Shri Ranga (Chittoor): Sir, I call the attention of the Minister of Food, Agriculture, Community Development and Co-operation to the following matter of urgent public importance and I request that he may make a statement thereon:—

> The belt area restrictions for the movement of foodgrains for personal and family consumption and decrease of quantum of ration in Andhra Pradesh.

In the notice that I had given I had made definite mention of the satyagraha that is going on in Chittoor District in regard to this particular matter complaining that even these headload quantities also are being reduced and the headloaders are being harassed. That portion is not here nor any effort has been made by Government to give any information in regard to that in this statement that he is going to make.

The Minister of State in the Ministry of Food, Agriculture, Community Development and Cooperation (Shri Govinda Menon): For the effective enforcement of the movement control orders restrictions have been placed on the movement of foodgrains in the border areas which is generally defined as a belt all along the area concerned extending to 8 km. (5 miles). Movement of foodgrains within this belt is prohibited. In order, however,

[Shri Govinda Menon]

to remove genuine hardships exemptions are provided, some of which are noted below:—

(i) Movement of foodgrains within the same town or village situated in the border area;

(ii) Movement of fodgrains not exceeding 20 Kg. in the aggregate at one time by a *bona fide* resident of the zonal border area for his domestic consumption;

(iii) Movement of foodgrains from a village in the border area to the nearest grain market for the purpose of sale.

2. Where movement across inter-State borders is involved, *bona fide* passengers are permitted to carry as part of their luggage a limited quantity which is generally 1 Kg. The whole or part of produce of land cultivated or owned by a person for his domestic consumption is also permitted to be brought under appropriate permits. At present import and export of rice and paddy from Andhra Pradesh is restricted. For the purposes of movement of which Andhra Pradesh constitutes the same zone with the other three southern States of Mysore, Madras and Kerala. The export of coarse grains like jowar, bajra gram, ragi, etc., is also banned from Andhra Pradesh. The exemptions on the lines of those noted above are provided in all these orders.

3. With regard to the question of decrease in quantum of ration, no decision has yet been taken to effect the decrease in statutorily rationed areas. In the area under informal rationing, the quantum has not been kept at a unifrom level but has varied depending upon availability and demand. The Andhra Government have intimated that there is no proposal under their consideration for decreasing the quantum of ration.

Shri Ranga: It is nearly a week since I had given notice of this and they have had enough time to get in touch with the Andhra Government and get all the latest information in regard to the satyagraha movement that is going on in Palmaner, Chittoor District, since the 18th of November. There is no mention in regard to that here. What is more, there are two things so far as the statement is concerned. Actually, 25 kilogram is being allowed to be carried but here it is stated that only 20 kilogram is allowed. Evidently, they want to play some mischief and want to reduce it to 20 kilogram. I do not understand this at all. 25 kilogram is being allowed according to the local gevernment and yet they have been trying to reduce it and interfere with it; that is why they have stated here as 20 kilogram. I want to draw their attention to this discrepancy.

Another discrepancy is that they have said in sub-paragraph (iii) of paragraph 1:—

> "Movement of foodgrains from a village in the border area".

Actually, what is happening is that foodgrains are not being allowed to be taken to and from the villages, that is, to those villages in the belt area and from that area into the market. That also is being obstructed. Now, they say that it is being allowed to be taken to the market from that area, but so far as movement of foodgrains into that area is concerned, they themselves do not say anything at all. It is sealed off completely and those people are completely helpless. They talk only about the producers. What about the agricultural workers and other non-agricultural people who do not produce anything and who are not allowed to import anything into that area and are not able to export anything out of that area? So for as export is concerned, something is said; but what about the imports? They are being starved today and that is why the satyagraha movement is going on.

I would like to know whether this Government would try to get in touch

with the local government and between them two—it does not matter how they would do it—would make it possible for the non-agricultural people to import—I am using a wrong word because in one's own country for movement from one village to another you cannot use the word "import" to bring in foodgrains from areas outside the belt area into the belt area in order to be able to supplement the most inadequate and scandalously low informal rations that they are supplying. Even they themselves say that they are not regular. Would they be willing to allow them to bring into that area foodgrains from outside?

Shri Sheo Narain (Bansi): Is it a question or a lecture?

Mr. Speaker: Probably, he will not be able to answer all the questions.

Shri Ranga: The first one was by way of introduction.

Mr. Speaker: Now what is the question?

Shri Ranga: Imports are not allowed; so, would they be willing to increase the total quantity of headloads to be brought form outside into that area and would they be willing to give due publicity to this? Even to these few concessions no proper publicity is given at all and the policemen are interfering with and are harassing the people.

Shri Govinda Menon: These are not new orders. There have been imports for some time and if there are difficulties of the nature referred to by Professor Ranga, I shall be happy to take it up with the Government of Andhra Pradesh.

Shri Ranga: I have already written to you and you have not done anything.

11.08 hrs.

RE. SHORT NOTICE QUESTION—*contd.*

Mr. Speaker: Now, we will take up short notice question No. 7.

श्री मधु लिमये : अध्यक्ष महोदय, मेरी एक प्रार्थना है ।

अध्यक्ष महोदय : ठहर जाइये । श्रीमती तारकेश्वरी सिन्हा :

श्री मधु लिमये : अध्यक्ष महोदय : मेरी प्रार्थना तो सुन लीजिए ।

अध्यक्ष महोदय : अच्छा बतलाइये ।

श्री मधु लिमये : अब यह बात सही है कि मेरी घड़ी की वजह से धोका हुआ और मैं देर से यहां पहुंचा जिसके लिए मैं कि माफ़ी चाहता हूं । कृपया मुझे अब अपने प्रश्न को पूछने का मौका दिया जाय ।

अध्यक्ष महोदय : यह घड़ी के देर होने की वजह से कसूरवार मैं तो नहीं हो सकता, न हाउस हो सकता है और न मिनिस्टर ही हो सकता है । जो मेम्बर वक्त से न पहुंचे उसे सफर करना होगा, अगर मिनिस्टर वक्त से न पहुंचे और उस को मैं कहूं कि वह सवाल छोड़ता हूं तो उस से मिनिस्टर तो म करता नहीं मैम्बर ही सफर करता है जिसने कि सवाल किया है । अगर मिनिस्टर सफर करता हो तो मैं मैम्बर को ऐलाऊ नहीं करूंगा ।

श्री बागड़ी : अगर इतना मैम्बर के वास्ते है तब मैम्बर को इजाजत दे दें । अगर आप ऐसा समझते हैं कि क्वैशचन ऐलाऊ न करने से सफर मेम्बर करेगा तब फिर मैम्बर को सवाल करने का आप मौका दें । मिनिस्टर की गलती है और नाम मैम्बर का हो गया। यह काम मिनिस्टर का है ।

श्री मधु लिमये : मैं ने तो कैह दिया कि मेरी गलती हुई और मैं माफी चाहता हूं ।

Mr. Speaker: The Minister ought to show some regret to the House.

The Minister of Commerce (Shri Manubhai Shah): I am sorry I was held up with His Excellency the Minister of Nepal. I thought that my question was number two. I was trying to hurry up; yet, I was late by five minutes.

11.10 hrs.

ORAL ANSWER TO QUESTION

SHORT NOTICE QUESTION

Export Subsidy

S.N.Q. 7. Shrimati Tarkeshwari Sinha:
Shri S. M. Banerjee:

Will the Minister of Commerce be pleased to state:

(a) whether Government are considering the question of making available the raw materials at subsidised rates to export industries;

(b) if so, what form this subsidy will take;

(c) whether there is also a proposal to streamline the procedure for getting over the drawbacks;

(d) whether it is a fact that a Committee was appointed to go into this matter and the Committee has since submitted its report; and

(e) if so, the recommendations thereof?

The Minister of Commerce (Shri Manubhai Shah): (a) No, Sir.

(b) Does not arise.

(c) Yes, Sir.

(d) and (e). An informal inter-ministerial Committee was formed to go into this matter and its report is awaited.

Shrimati Tarkeshwari Sinha: May I know whether the difficulty of higher prices affecting the export industry has come to the notice of the Government and whether the Government is considering the necessity of rationalising the cost affecting exports. Increased exports are very necessary after devaluation. The Minister says that this does not arise. May I know when any such decision is likely to be taken? May I also know whether the costs of export industries are likely to be streamlined and rationalised?

Shri Manubhai Shah: The scheme of things is that we give assistance at one point and not at many points. Therefore, whatever the effect of the higher prices of raw materials, as the hon. Member rightly points out, is taken to the overall effect of the cost of production, and if it is realised or found that the cost at the ultimate point is higher, we try to give cash assistance at that point.

Shrimati Tarkeshwari Sinha: May I know whether there is any proposal, meanwhile, to increase the cash subsidy which is being paid already to the industry or whether that increase is likely to be made in the form of a rebate?

Shri Manubhai Shah: As far as rebate is concerned, it is a statutory drawback of customs and import. We have already written into the law and rebates are being given. No cash assistance other than what I have laid on the Table of the House on the 16th August is under contemplation.

Shri S. M. Banerjee: I would like to know whether, after devaluation, certain industries which were exporting on the basis of some raw materials imported from foreign countries, have demanded certain concessions, and if so, that were the demands and how far the Government has met them.

Shri Manubhai Shah: The main demand was that they should be ensured of the imported raw material from the cheapest and the best source. This demand has been conceded and a new import policy called the registered exporters' import policy has been

announced in the Red Book since devaluation.

Shrimati Ramdulari Sinha: May I know whether it is a fact that the price of sugarcane has been fixed below the normal cost of production only with a view to pursuing a policy of exporting sugar in larger quantities at the cost of sugar producers?

Shri Manubhai Shah: There is no question of 'at the cost of sugar producers'. The producers are given the fair cost. The rest it subsidy and it is governed by an Act of Parliament. Every year we give the necessary subsidy for the export of sugar.

Shri Hem Barua: In view of the fact that imports are liberalised as a post-devaluation measure, may I know whether Government are in a position to give us the impact of this policy on export industries in this country?

Shri Manubhai Shah: It is too early, as I have said earlier in the House, to say that. Only four months have gone. Give us more time and then we should be able to show the results.

श्री शिव नारायण : मैं जानना चाहता हूं कि यह रिपोर्ट कब तक आ जायेगी और उस का इम्प्लिमेन्टेशन सरकार कब तक करेगी ।

श्री मनुभाई शाह : जहां तक रिपोर्ट का ताल्लुक है, वह चालू कमेटी है । जिस जिस आइटेम में तकलीफ आ जाती है, उसे निकाल दिया जाता है । उन के जो रिप्रेजेन्टेशन आते हैं उनकी भी तहकीकात की जाती है ।

Shrimati Savitri Nigam: May I know whether Government have scrutinised the items which, when exported, are selling at much higher prices than the world prices, and if the answer is in the affirmative, what are those items and what action Government is going to take to give them some additional subsidy to see that our exports are increased?

Shri Manubhai Shah: There are items like engineering goods, steel products, sugar, cotton seed cake, chemicals, pharmaceuticals, plastics, handicrafts, and woollen carpets made by hand, which are given cash assistance because the local costs are higher than the world prices.

श्री विभूति मिश्र : क्या मंत्री जी जूट के ऊपर कोई सब्सिडी देना चाहते हैं क्योंकि वह बैंकाक से और दूसरी जगहों से जूट मंगा कर के यहां के जूट की कीमत को डिप्रेस कर रहे हैं। क्या वह जूट ग्रोअर को सब्सिडी देंगे और जूट को सस्ता कर के उस के माल को बेनेवा कर के बाहर भेजने का इन्तेजाम करेंगे ?

श्री मनुभाई शाह : हम हमेशा प्रयत्न करते हैं कि यहां के जूट को बढ़ावा दिया जाये, और माननीय सदन को पता है कि सन 1948 में यहां पर 22 लाख गांठें होती थीं और आज 78 से 80 लाख गांठें तक होती हैं । यह सरकार की नीति शुरू से ही है । जहां तक दूसरी बात का ताल्लुक है हम 90 लाख से ले कर 1 करोड़ गांठों तक को प्रोसेस कर सकते हैं । हमारे यहां 80 लाख का उत्पादन होता है । हम जो 20 लाख बाहर से मंगा रहे हैं, उस पर हम को सब्सिडी देनी पड़ती है ।

Shri P. R. Chakraverti: May I know what are the criteria in terms of which priority is determined so far as the availability of these facilities, particularly subsidy, is concerned?

Shri Manubhai Shah: The subsidy is on the basis (a) whether there is a sizeable export potential or not; and (b) whether after the proper examination of the cost of production they do deserve—several factors are beyond the control of the manufacturers—any assistance to compensate for the difference in price locally and in the world prices.

WRITTEN ANSWER TO QUESTION

SHORT NOTICE QUESTION

National Commission on Labour

S.N.Q. 6. Shri Madhu Limaye:
Dr. Ram Manohar Lohia:

Will the Minister of **Labour, Employment and Rehabilitation** be pleased to state:

(a) whether Government have decided to set up a National Commission on Labour;

(b) whether there was any opposition to this move from certain vested interests;

(c) the terms of reference of this Commission;

(d) its composition; and

(e) when it is likely to submit its report?

The Minister of Labour, Employment and Rehabilitation (Shri Jagjivan Ram): (a) Yes.

(b) No.

(c) The Commission is expected to review the existing legislative and other provisions intended to protect the interests of labour, to assess their working and to advise how far these provisions serve to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives of establishing a socialist society and achieving planned economic development. It will, in particular, study and report, on matters like, the levels of workers' earnings, arrangements for social security, industrial relations, and measures for improving conditions of rural labour.

(d) In addition to the Chairman and a member Secretary, the Commission will have four members each to represent employers' and workers' interest and four independent members, including one economist.

(e) About two years.

11.16 hrs.

RE: CALLING ATTENTION NOTICES
(Query)

Shri S. M. Banerjee (Kanpur): I rise on a point of order.

Mr. Speaker: Let him ask for leave and then I will allow him.

Shri Indrajit Gupta (Calcutta South-West): We had also tabled some call-attention notices. Is the hon. Commerce Minister going to make any statement in Parliament today about the outcome of his talks regarding the closure of those textile mills? Is there anything?

The Minister of Commerce (Shri Manubhai Shah): I have requested for the time, half past Two, if it is possible.

श्री बड़े (खारगोन) : अध्यक्ष महोदय, मैं ने भी नोटिस दी थी .....

अध्यक्ष महोदय : आप को इत्तला मिल जायेगी ।

श्री बड़े : सुशील मुनि से और प्रधान मंत्री से जो पत्र व्यवहार हुआ है वह सामने आना चाहिये । वह महत्वपूर्ण पत्र व्यवहार है । .....(**व्यवधान**) .....

अध्यक्ष महोदय : लास्ट डेज हैं इसलिए मैं आप को रेज करने के लिए कह रहा हूं ।

श्री बड़े : वह पत्र व्यवहार तो सामने आना चाहिए ।

अध्यक्ष महोदय : अब आप बैठ जाइये । अगर उन को करना है तो वह करेंगी ।

श्री हुकम चन्द कछवाय (देवास) : मैं निवेदन कर रहा हूं कि सुशील मुनि ने जो अनशन करने की घोषणा की उस पर प्रधान मंत्री से उन का जो पत्र व्यवहार हुआ है वह बहुत ही आवश्यक है और उस पर यहां चर्चा होनी चाहिए । प्रधान मंत्री ने जो विचार पत्र

व्यवहार में व्यक्त किया है उस को वह बतलायें। आज उन्होंने अनशन शुरू कर दिया है।

अध्यक्ष महोदय : अब आप बैठ जाइये।

श्री रामसेवक यादव (बाराबंकी) : मैं ने दो ध्यान आकर्षण प्रस्ताव दिये थे। एक तो जो सर्वोच्च न्यायालय ने नोटिस दी है श्री मधु लिमये ने जो विशेषाधिकार की अवहेलना का प्रश्न उठाया है उस के सम्बन्ध में मैं ने उस के बारे में जानकारी हासिल करने के लिए संसद कार्य मंत्री से पूछा था।

अध्यक्ष महोदय : अभी मुझे कोई नोटिस नहीं मिली है।

श्री रामसेवक यादव : अखबार में छपा है।

अध्यक्ष महोदय : अखबार में छपे होने से ही उसे नहीं लिया जा सकता।

श्री रामसेवक यादव : अच्छा अब मैं दूसरी बात पूछता हूं। जो यहां गृह मंत्री के सम्मान में एक पुलिस परेड होने वाली थी उस से जनता में बहुत असन्तोष है। उसके बारे में वक्तव्य दिया जाये।

अध्यक्ष महोदय : मैं ने उसे डिसअलाऊ कर दिया है।

श्री मधु लिमये (मुंगेर) : मेरा अल्प सूचना प्रश्न था।

अध्यक्ष महोदय : उस को अब न लीजिये।

श्री मधु लिमये : अध्यक्ष महोदय, मेरे आने में देरी हुई। इस लिए मैं खेद प्रदर्शित किया है। यह कमिशन स्वतन्त्रता के बाद .....

अध्यक्ष महोदय : श्री मधु लिमये, आज बीस सालों में ऐसा कभी नहीं हुआ और न मैं कर सकता हूं। इस बात को आप छोड़ दीजिये।

श्री मधु लिमये : आप मंत्री महोदय का खेद स्वीकार करते हैं .....

अध्यक्ष महोदय : मैं ने आप से कह दिया कि अब वह नहीं लिया जा सकता।

श्री मधु लिमये : अच्छा तो अब दूसरी बात के बारे में मुझे निवेदन करने दीजिए। यह बिहार के अफसरों और सरकार के बारे में .....

अध्यक्ष महोदय : मैं ने कहा है कि मुझे कोई नोटिस नहीं मिली है।

श्री मधु लिमये : आप को नोटिस नहीं मिली होगी, लेकिन अखबारों में निकला है।

अध्यक्ष महोदय : मैं अखबार की बात को ले कर किस तरह से यहां इस को ले सकता हूं।

श्री मधु लिमये : फिर मौका कब मिलेगा। इस लिये मेरी बात सुनिये।

अध्यक्ष महोदय : वह मैं नहीं कर सकता। श्री हेम बरुआ।

श्री मधु लिमये : कब लेंगे इसको।

अध्यक्ष महोदय : आज शायद वह आ जाये।

श्री मधु लिमये : तो क्या उस के बाद लेंगे।

अध्यक्ष महोदय : श्री हेम बरुआ।

Shri Hem Barua (Gauhati): I had submitted a call-attention notice on Miss Reita Faria's proposed visit to Vietnam, but unfortunately that call-attention notice has not been....

Mr. Speaker: I am not so keen on chasing Miss Reita, wherever she wants to go.

Shri Hem Barua: That is call-attention.....

Mr. Speaker: No, no. Now Miss Reita should be left out.

श्री शिव नारायण (बांसी) : यह रेकार्ड में नहीं रहना चाहिए।

अध्यक्ष महोदय : क्यों रेकार्ड में रहना चाहिए ।

श्री हुकम चन्द कछवाय : वह सुन्दरी को नहीं चाहते ।

Shri S. M. Banerjee: Two call-attention notices have been given on two very important matters.

Since we are at the fag end of the session, I would request you to kindly allow me. We had tabled calling-attention-notices on two important issues. One was about the release of the students especially in Delhi. The second one was about the release of the political prisoners arrested under the Preventive Detention Act, before the elections. Since the calling-attention-notices have been rejected, I would only request that the hon. Minister may make some statement on the matter.

Mr. Speaker: I shall find out.

श्री ज० ब० सिंह (पं.सं.) : अध्यक्ष महोदय, कालिंग एटेंशन मोशन जिन मसलों पर दिया जाता है वे बहुत महत्वपूर्ण मसले होते हैं । मैंने भी एक कालिंग एटेंशन दिया था । मुझे उस विषय में आठ दस तार मिले हैं । मऊ डिस्ट्रिक्ट आजमगढ़ में भुखमरी फैली हुई है । वहां पर सूत के दाम दुगुने हो गए हैं । सरकार ने कोई तरीका नहीं अपनाया कि सूत किस तरह से फिक्स्ड प्राइस पर लोगों को उपलब्ध किया जाए । इसके बारे में जो मैंने कालिंग एटेंशन नोटिस दिया था, मैं प्रार्थना करता हूं कि उसको आप स्वीकार करें ।

Shri Sivamurthi Swamy (Koppal): I had tabled so many questions, short notice questions and notices for raising half-an-hour discussion regarding the revision of the pay scales of engineers, foremen, that is, railway foremen and apprentices in the Railway Ministry who are the backbone of the railways. But these have not been admitted....

Mr. Speaker: At the moment, I am only dealing with calling-attention-notices.

Shri Sivamurthi Swamy: I would request the Railway Minister to kindly look into the matter.

श्री यशपाल सिंह (कैराना) : मुझे आप से शिकायत नहीं है। नेता सदन से मुझे शिकायत है । हमारे नेता सदन दूसरों से बात कर रहे हैं, हमारी बात सुन ही नहीं रहे हैं—

अध्यक्ष महोदय : आप ज्यादा जोर से न बोलें । आपने कहा है कि आप अनशन पर हैं ।

श्री यशपाल सिंह : भूख हड़ताल तो की हुई है । मुझे गम भूख हड़ताल का नहीं नेता सदन के वादे का गम है । नेता सदन से मैं कहना चाहता हूं

मुझे अपनी बेबसी पर कोई गम नहीं है
लेकिन
तेरे दिल में कोई अरमां कहीं घुट के रह
न जाए ।

वह वादा करते हैं और वादे को तोड़ते हैं । मुझे भूखहड़ताल से कोई ताल्लुक नहीं है ।

अध्यक्ष महोदय : मुझे हैरानी हुई है । यशपाल सिंह जी ने मुझे लिखा था कि मैं अनशन कर रहा हूं कल से । मुझे यह खुशी है कि उनके चेहरे पर और ज्यादा रौनक है ।

श्री यशपाल सिंह : अनशन से तो आयु बढ़ती है । गीता माता का हुक्म है :

विषया विनिवर्तन्ते निराहारस्य देहिनः
रसवर्जं रखोऽप्यस्य परं दृष्ट्वा निवर्तते ।

अनशन से आयु बढ़ती है, तेज बढ़ता है। लेकिन माननीय नेता सदस्य जो रोज रोज वादे तोड़ते हैं उनका क्या उपाय किया जाए ?

Shri M. R. Krishna (Peddapalli): Why is there this announcement in Parliament about fasting?

संसद्-कार्य तथा संचार मंत्री (श्री सत्य नारायण सिंह) : माननीय सदस्य बड़े धर्मात्मा गिने जाते हैं। गीता और रामायण का पाठ भी वह बहुत करते हैं। उनको मैं एक बात याद दिलाना चाहता हूं वादा भंग की। आपको याद होगा कि महाभारत में भगवान कृष्ण ने कहा था कि हम कभी आयुद्ध नहीं पकड़ेंगे। हुआ यह कि दस दिन बाद भीष्म ने आयुद्ध पकड़वा दिया। हाउस ने मुझ को वादे से टलवा दिया। मैं क्या करूं ?

Shri A. P. Sharma (Buxar): Regarding the proposed statement by the hon. Commerce Minister at 2-30 P.M., I would submit that it is a very important subject, and, therefore, we should be allowed to ask questions after the statement is made.

Mr. Speaker: That would be seen at that time.

11.23 hrs.

QUESTION OF PRIVILEGE AGAINST SHRI MADHU LIMAYE

Mr. Speaker: Now, Shri G. N. Dixit might only ask for leave to raise the question of privilege against Shri Madhu Limaye....

Shri G. N. Dixit (Etawah): Under rule 225....

Mr. Speaker: He might only ask for leave now.

Shri G. N. Dixit: Under rule 225, I had raised the question of privilege, and it was objected to. Under rule 225(2)....

श्री किशन पटनायक (सम्बलपुर) : नए सिरे से क्या होगा ? कल उन्होंने मूव किया था क्या ?

Mr. Speaker: Now, he might ask for leave.

Shri G. N. Dixit: I ask for leave to raise the question of privilege, under rule 225(2).

Shri S. M. Banerjee (Kanpur): On a point of order. I raise on a point of order under rule 223. As I pointed out yesterday also, rule 223 reads thus:

> "A member wishing to raise a question of privilege shall give notice in writing to the Secretary before the commencement of the sitting on the day the question is proposed to be raised. If the question raised is based on a document, the notice shall be accompanied by the document.".

I hope that you, Sir, have satisfied yourself on these two counts.

Rule 224 reads thus:

> 'The right to raise a question of privilege shall be governed by the following conditions, namely:
>
> (i) not more than one question shall be raised at the same sitting;
>
> (ii) the question shall be restricted to a specific matter of recent occurrence;
>
> (iii) the matter requires the intervention of the House.'.

Mr. Speaker: He had made that point yesterday also.

Shri S. M. Banerjee: On the 17th August, 1966, just after the Question Hour, this was what you had stated. I am reading out from the proceedings of the House. It is as follows:

> 'RE: *Question of Privilege against the Minister of Food and Agriculture.*
>
> *Mr. Speaker*: There was a breach of privilege notice given by Shri Madhu Limaye in the first instance, and then by three Members Shri Daji and Shri S. M. Banerjee

[*Mr. Speaker*]

and by Shri Madhu Limaye again after four days.'.

Then, you argued and ultimately you said:

> "So far as this privilege is concerned, it is of the utmost importance that the notice must be given immediately at the very first opportunity; a delay of one day or two days has been held to be fatal to the entertainment of any notice of breach of privilege....".

Then, Shri Kamath had interrupted and said:

> "You were pleased to say that there should not be delay of even 24 hours, that a delay of even 24 hours may be fatal to the privilege motion.".

Then, there were interruptions, and Shri Kamath said:

> "Please keep quiet....".

Then, you had said:

> "Order, order. Both sides will kindly listen to me.".

And we listened as we are listening now. Then, you had said:

> "There are decisions in which two days, three days have been held to be fatal.".

Here, what is the specific subject? The specific subject is that Shri Madhu Limaye had sent a letter to you in the form of a privilege motion which read as follows:

> "I hereby give notice of a privilege motion against one gentleman styling himself as Colonel Amrik Singh *alias* K. S. Sahi. . . If the document exists, then Mr. Jit Paul, against whom a breach of privilege motion is already pending in the House, would be guilty of another grave breach of privilege...."

Shri G. N. Dixit: On a point of order. The hon. Member is going back on the proceedings which had taken place yesterday and which you had closed yesterday when you were going to ask for voting. Therefore, rules 224 and 225 would not apply now and they are gone.

Mr. Speaker: Shri S. M. Banerjee, I think, had argued that point yesterday.

Shri S. M. Banerjee: I had not quoted at that time because I had not got the document then.

Then, Shri Madhu Limaye had said in his letter as follows:

> "It is not for me to say whether this document exists or not. All I know is that this constitutes a scurrilous attack on the Hon. Speaker. It is for the House and the Privilege Committee to look into the existence or otherwise of this document and haul up Col. Amrik Singh or Mr. Jit Paul as the case may be for breach of privilege.".

Then, he went a step further and said. . . .

Shri M. R. Krishna (Peddapalli): These are all details. Are you allowing him to go into all those things now?

Shri G. N. Dixit: On a point of order. . . .

Shri S. M. Banerjee: I am coming to another point now.

Mr. Speaker: He should say that straightway.

Shri S. M. Banerjee: I am not as capable as you, Sir, or the other Members. . . .

Mr. Speaker: What is the use of casting these reflections? I am asking him to give me the points or the facts straightway.

Shri S. M. Banerjee: I have my own limitations both in regard to language

and in regard to expression also. Kindly hear me. My hon. friend opposite had taken at least half an hour yesterday.

Mr. Speaker: That was because he was the Mover. But the hon. Member Shri S. M. Banerjee is only raising a point of order.

Shri S. M. Banerjee: I only want to quote your own rulings. The rule says that not more than one question shall be raised at the same sitting and that the question shall be restricted to a specific matter of recent occurrence. In other words, the thing should have happened recently. In this case, on what is this question of privilege based? It is based on the Eleventh Report of the Privileges Commitee which was laid on the Table of the House and which was taken up yesterday for consideration. So, the hon. Member's motion for breach of privilege is not based suddenly on any document, but it is based on the report, on the findings of the Members of the Privileges Committee. More than three months or so have elapsed since Shri Madhu Limaye had written that letter. Shri G. N. Dixit had never the wisdom to raise it then. He is seeking to raise it only now. Therefore, my submission is that this motion does not fulfil the conditions laid down.

I, therefore, crave your indulgence and request you to kindly consider the point of order on this line and see whether this has been done on the basis of any incident of a recent occurrence or whether this is a deliberate attack with *mala fide* intention and because of the axis of Shri Atulya Ghosh and Shri S. K. Patil against Shri Madhu Limaye. *(Interruptions)*

श्री मधु लिमये (मुंगेर) : मेरे खिलाफ़ इतने आरोप लगाए गए हैं । अब श्री बनर्जी के एक वाक्य कहने पर क्यों एतराज किया जा रहा है ?

श्री बड़े (खारगौन) : अध्यक्ष महोदय, मेरा पायंट आफ आर्डर है ।

पहली बात तो यह है कि यह कोई रिसट आकरेंस नहीं है । दूसरी बात यह है कि इस सदन के सदस्यगण अपने कर्त्तव्य का पालन करने के लिए यहां पर प्रस्ताव और मोशन आदि लाते हैं । जहां तक प्रिविलेज मोशन्ज का सम्बन्ध है, आप चैम्बर में बैठ कर उन के बारे में फैसला करते हैं । तो आप ने इस प्रिविलेज मोशन के बारे में ऐसा क्यों नहीं किया ? आप किसी भी प्रिविलेज मोशन को एज स्पीकर एलाऊ या डिसएलाऊ करते हैं, एज श्री हुकम सिंह नहीं । कल आप ने कहा कि चूंकि आप इस में पर्सनली इन्वाल्व्ड है, इस लिए आप ने इस को एलाऊ किया । वास्तव में प्रिविलेजज कमेटी की रिपोर्ट में जो एविडेंस दिया गया है, वह रद्दी की टोकरी में फेंकने लायक है । उस के आधार पर इस प्रिविलेज मोशन को लाने की इजाजत नहीं देनी चाहिए थी । आप को स्पीकर और श्री हुकम सिंह के बीच में फ़र्क करना चाहिए था और एज स्पीकर इस बारे में निर्णय करना चाहिए था । आप को अपने चैम्बर में ही इस प्रिविलेज मोशन को डिसएलाऊ कर देना चाहिए था । इस मामले में कोई ब्रीच आफ़ प्रिविलेज नहीं हुआ है । यह केवल इस लिए हाउस में आ रहा है, क्योंकि आप इस में पर्सनली इन्वाल्व्ड हैं । क्या इस का अर्थ यह है कि कोई मैम्बर केवल इस लिए कोई प्रिविलेज मोशन नहीं ला सकता है, क्योंकि स्पीकर उस में पर्सनली इन्वाल्व्ड है ? अगर आप इस तरह प्रिविलेज मोशन को लाने की इजाजत देंगे, तो भविष्य में अपोजीशन के किसी सदस्य को कोई प्रिविलेज मोशन लाने की हिम्मत नहीं होगी । इसी तरह कई कैसिज में मिनिस्टर्ज इन्वाल्व्ड होते हैं ; तो क्या इसी कारण हम किसी प्रिविलेज मोशन को हाउस में नहीं ला सकते हैं ? इस प्रकार इस प्रिविलेज मोशन को लाने देना बहुत अनुचित है ।

Shri S. M. Banerjee: It has been done with a view to wreak vengeance. Shri Madhu Limaye has exposed them to the hilt.

डा० राम मनोहर लोहिया (फ़र्रुखाबाद): अध्यक्ष महोदय, जहां तक प्रक्रिया का सम्बन्ध है, मैं आप से अर्ज करना चाहता हू कि विशेषाधिकार समिति को यह प्रस्ताव देने से पहले इस सदन में इस पर बहस होनी चाहिए। इस बहस का अवसर आप या तो अपनी अनुमति देने से पहले, सदस्यों के इस पर वोट देने से पहले दीजिए, या इस के बाद दीजिए, लेकिन बिना बहस के यह प्रस्ताव विशेषाधिकार समिति के पास नहीं जाना चाहिए। क्योंकि यह एक सदस्य, श्री मधु लिमये की मन की स्थिति के बारे में है। मन की स्थितियां कई हो सकती हैं। मैं विवाद के लिए यह मान सकता हूं कि श्री मधु लिमये के मन में शायद यह बात रही हो कि वह आपको नीचा दिखाना चाहते हों। श्री दीक्षित ने एक बात आप के सामने रखी जिस का आप पर असर पड़ा।

उन के मन की दूसरी स्थिति यह हो सकती है कि दिल्ली में जो बड़े बड़े लोगों के, या सरकार के, जो दस पंद्रह हजार आदमी घूमते फिरते रहते हैं, जो रिश्ते के आदमी हैं, जो सम्बन्ध कायम करते हैं, लेन देन चलाते हैं, किसी तरह से दिल्ली को उन से राहत दिलानी चाहिए। अगर इन दस पन्द्रह हजार में से तीन, चार, पांच, सात आदमी भी खत्म हो जायें, कम हो जायें, तो एक बड़ा भारी काम हो जायेगा। हो सकता है कि श्री मधु लिमये के मन में यह बात रही हो।

हो सकता है कि उन के मन में यह रहा हो कि अगर कोई आदमी जान-बूझ कर लोगों को बदनाम करता है, अगर ऐसे आदमी को अच्छी तरह से कोई सजा मिल जाये, तो फिर बाकी लोगों के लिए आगे के लिए वह मिसाल बन जायेगी और बाकी लोग इस तरह से जल्दी में लोगों को बदनाम नहीं करेंगे। ये तीन मन की स्थितियां हो सकती हैं।

मुझे आप की मन की स्थिति के बारे में भी कुछ अर्ज करना है। आप के पास एक खत आज पहुंचा है। उस खत को ले कर कुछ अखबार वालों ने शायद नासमझी में शायद इस लिए कि यहां की कार्यवाही ठीक तरह से नहीं छपती है, हम लोगों पर यह आरोप लगाया—और कल भी कई दफ़ा यह कहा गया—कि शायद हम जाली दस्तावेज तैयार करते हैं या लोगों के चक्कर में फंस जाया करते हैं। आप का वह पत्र बिल्कुल साफ़ है। आप ने एक मंत्री को वह पत्र लिखा। उस पत्र में आप ने अपने ज़िले के एक आदमी के लिए, जो क्यू होती है, जो कायदा होता है,..... (*Interruptions*).

Mr. Speaker: Instead of discussing that, let him conclude.

डा० राम मनोहर लोहिया: .....उस कायदे के ख़िलाफ़ जा कर, क्योंकि सरकारी मकान एक कायदे से, एक नियम से, दिये जाते हैं और नियम से उस आदमी को मकान नहीं मिलना चाहिए था, लेकिन फिर भी आप ने मंत्री को खत लिखा, क्योंकि वह आप के ज़िले का है, "आउट आफ़ टर्न" यह शब्द... (*Interruptions*)

अध्यक्ष महोदय: अब आप मेरी स्थिति भी कह चुके हैं। अब आप बैठ जाइये।

डा० राम मनोहर लोहिया: तो क्या.... (*Interruptions*)

अध्यक्ष महोदय: मैं उस खत को पढ़ देता हूं। यह हाउस और कंट्री जज करेगा। मैं लीडर आफ़ दि हाउस से कहूंगा कि वह उस खत को पढ़ दें।

They have taken advantage of that.

डा० राम मनोहर लोहिया: एडवांटेज क्या है? आप चारों तरफ़ से हम पर हमला करवा रहे हैं। कहा जाता है कि ये लोग गलत

खत रखा करते हैं । आखिर कोई हद हुआ करती है ?

अध्यक्ष महोदय : माननीय सदस्य बैठ जायें । मैं खत पढ़ देता हूं । (*Interruptions*)

Order, order. I will ask the Leader of the House to kindly read that letter which has been flourished twice here in this House.

डा० राम मनोहर लोहिया : पहले मैं अपनी बात खत्म करूंगा, उस के बाद ।

The Leader of the House (Shri Satya Narayan Sinha) rose—

Shri Surendranath Dwivedy (Kendrapura): This is not the proper procedure. He was wanting to ask the leave of the House for a privilege motion. On that points of order have been raised. Before that is disposed of, you are asking somebody else to read something else.

Mr. Speaker: Because he has raised it.

Shri Surendranath Dwivedy: He raised another point. In the course of a particular discussion, can anyone raise any other matter which is not relevant to the matter under discussion? This is an extraneous matter.

Shri Ranga (Chittoor): We do not know about it.

Shri Surendranath Dwivedy: I do not think you should introduce it in the midst of this discussion.

Mr. Speaker: All right.

So far as these points of order are concerned, the main point made is that this is not a matter of recent occurrence, that that letter written by Shri Madhu Limaye was written to me about two months ago.

डा० राम मनोहर लोहिया : अध्यक्ष महोदय, तो मुझे खत्म नहीं करने देंगे ? आप मेरी बात तो पूरी होने दीजिए ।

अध्यक्ष महोदय : मैं ने सुन लिया है ।

That letter was written to me about two months ago. That is correct. But that letter did not give any cause of action for any breach of privilege. It is only after the Privileges Committee's finding that there is no such letter that Amrik Singh had referred to that this cause has arisen. Therefore, that is not belated and that is of recent occurrence. I would now ask those Members who are in favour of leave being granted to rise in their places--As more than 25 Members have risen in their places, leave is granted.

डा० राम मनोहर लोहिया : अध्यक्ष महोदय : यह ठीक नहीं है । आप यह क्या कह रहे हैं? आप कैसे इस मदन को चला रहे हैं ? आप एक भाषण को बीच में ही खत्म कर देते हैं ।

अध्यक्ष महोदय : मुझे कहा गया है कि इस मोशन को कमेटी को भेजने से पहले यहां पर बहस हो । अगर हाउस खुद इस बारे में फैसला करना चाहता है, तो मुझे बहस पर कोई एतराज नहीं है । (*Interruptions*) लेकिन अगर इस को कमेटी के पास भेजा जाना है, तो इस वक्त कोई बहस नहीं होगी । फिर कमेटी फैसला करेंगे (*Interruptions*)

श्री स० मो० बनर्जी : हम रात के नो बजे तक बैठने के लिए तैयार हैं । यहां पर बहस होनी चाहिए ।

अध्यक्ष महोदय : मेरा खयाल है कि हाउस को और काम करना है । इस लिए यह कमेटी देखे कि क्या ब्रीच आफ़ प्रिविलेज हुआ है या नहीं (*Interruptions*)

Is that the pleasure of the House?

Several hon. Members: Yes, yes.

श्री मधु लिमये : अध्यक्ष महोदय, ये लोग क्यों बहस से भाग रहे हैं ?

Shri G. N. Dixit: I move:

"That the matter be referred to the Committee of Privileges."

Mr. Speaker: Motion moved:

"That the matter be referred to the Committee of Privileges."

श्री किशन पटनायक (सम्बलपुर) : सदन में गलत कायदे से काम हो रहा है।

श्री रामसेवक यादव (बाराबंकी): इस में मेरा एक संशोधन है।

Shrimati Renu Chakravartty: (Barrackpore): I wish to move an amendment that the matter should be discussed in the House.

Mr. Speaker: No, no.

Shri S. M. Banerjee: I move:

"That the question of breach of privilege for which leave has been granted be discussed in the House."

Seveal Hon. Members: No, no.

Shrimati Renu Chakravartty: Why are you afraid?

Mr. Speaker: This is a substitute motion.

Shri Surendranath Dwivedy: I move:

"That the Report of the Committee be submitted to the House on Monday".

Mr. Speaker: I will put that. First I will put Shri Banerjee's motion.

The question is:

"That the question of breach of privilege for which leave has been granted be discussed in the House."

The Lok Sabha divided:

Division No. 24] **AYES** **[11·47 hrs.**

Banerjee, Shri S.M.
Bhattacharya, Shri Dinen
Bheel, Shri P.H.
Chatterjee, Shri H.P.
Deo, Shri P.K.
Dharmalingam, Shri
Gulshan, Shri
Gupta, Shri Kashi Ram
Kunhan, Shri P.
Lohia, Dr. Ram Manohar
Mukerjee, Shri H.N.
Nair, Shri Vasudevan
Pattnayak, Shri Kishen
Roy, Dr. Saradish
Singh, Shri J.B.
Swamy, Shri Sivamurthi
Vishram Prasad, Shri
Warior, Shri
Yadav, Shri Ram Sewak
Yashpal Singh, Shri

NOES

Abdul Rashid Bakshi, Shri
Abdul Wahid, Shri T.
Achal Singh, Shri
Achuthan, Shri
Alva, Shri A.S.
Alva, Shri Joachim
Azad, Shri Bhagwat Jha
Bal Krishna Singh, Shri
Balmiki, Shri
Barman, Shri P. C.
Basappa Shri
Bhakt Darshan, Shri
Bist, Shri J.B.S.
Brij Bcsi Lal, Shri
Chakraverti, Shri P.R.
Chanda, Shrimati Jyotsna
Chandak, Shri
Chandrabhan Singh, Dr.
Chandriki, Shri
Chaturvedi, Shri S.N.
Chaudhuri, Shrimati Kamala
Chavan, Shri D.R.
Chavda, Shrimati Johraben
Das, Shri B.K.
Das, Shri N.T.
Dass, Shri C.
Desai, Shri Morarji
Deshmukh, Shrimati Vimla
Deshmukh, Shri B.D.
Dhuleshwar Meena, Shri
Dighe, Shri
Dixit, Shri G. N.
Dubey, Shri R. G.
Dwivedi, Shri M.L.
Gahmari, Shri
Gajraj Singh Rao, Shri
Govind Das, Dr.
Gowda, Shree Veerana
Guha, Shri A. C.
Gupta, Shri Shiv Charan
Hansda, Shri Subodh
Hanumanthaiya, Shri
Harvani, Shri Ansar
Hazarika, Shri J.N.
Heda, Shri
Jadhav, Shri Tulsidas
Jagjivan Ram, Shri
Jayaraman, Shri
Jedhe, Shri
Joshi, Shri A.C.
Joshi, Shrimati Subhadra
Kamble, Shri
Kappen, Shri
Kedaria, Shri C.M.

Keishing, Shri Rishang
Khan, Shri Shahnawaz
Kindar Lal, Shri
Kisan Veer, Shri
Kotoki, Shri Liladhar
Koujalgi, Shri H.V.
Krina Shankar, Shri
Krishna, Shri M.R.
Kureel, Shri B.N.
Laskar, Shri N.R.
Linga Reddy, Shri H.C.
Lonikar, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahida, Shri Narendra Singh
Mali Mariyappa, Shri
Malhotra, Shri Inder J.
Mandal, Dr. P.
Mantri, Shri D.D.
Masuriya Din, Shri
Mathur, Shri Harish Chandra
Mathur, Shri Shiv Charan
Mehrotra, Shri Braj Bihari
Mehta, Shri J.R.
Melkote, Dr.
Menon, Shri P.G.
Mirza, Shri Bakar Ali
Mishra, Shri Bibhuti
Mishra, Shri M.P.
Mohammad Yusuf, Shri
Mohanty, Shri Gokulananda
Mohsin, Shri
Morarka, Shri
More, Shri K.L.
Muthiah, Shri
Naidu, Shri, V.G.
Naik, Shri D.J.
Naskar, Shri P.S.
Nesamony, Shri
Niranjan Lal, Shri
Pandey, Shri R.S.
Pandey, Shri Vishwa Nath
Panna Lal, Shri
Patel, Shri N.N.
Patil, Shri D.S.
Patil, Shri M.B.
Patil, Shri S.B.
Patil, Shri S.K.
Patil, Shri T.A.
Patil, Shri V.T.
Pattabhi Raman, Shri C.R.
Prabhakar, Shri Naval
Pratap Singh, Shri
Puri, Shri D.D.
Raja, Shri C.R.
Raju, Shri D.B.
Ram, Shri T.
Ram Sewak, Shri
Ram Swarup, Shri
Ramdhani Das, Shri
Rameshekhar Prasad Singh, Shri
Rane, Shri
Ranga Rao, Shri
Ranjit Singh, Shri
Rao, Shri Hanmanth
Rao, Shri Jaganatha
Rao, Shri Muthyal
Rao, Shri Rajagopala
Rao, Shri Ramapathi
Rao, Shri Rameshwar
Rattan Lal, Shri
Raut, Shri Bhola
Ray, Shrimati Renuka
Reddi, Dr. B. Gopala
Reddiar, Shri
Reddy, Shri Narayan
Reddy, Shri Ramkrishna
Reddy, Shri Surender
Roy, Shri Bishwanath
Sahu, Shri Rameshwar
Saigal, Shri A.S.
Samnani, Shri
Sanji Rupji, Shri
Saraf, Shri Sham Lal
Satyabhama Devi, Shrimati
Sen, Shri P.G.
Shah, Shri Manubhai
Shah, Shrimati Ja aben
Shakuntala Devi, Shrimati
Shankaraiya, Shri
Sharma, Shri D.C.
Sharma, Shri K.C.
Sheo Narain, Shri
Shree Narayan Das, Shri
Siddananjappa, Shri
Sidhiah, Shri
Sidheshwar Prasad, Shri
Singh, Shri K.K.
Sinha, Shrimati Ramdulari
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sivappraghassan, Shri Ku.
Snatak, Shri Nardeo
Soundaram Ramachandran, Shrimati
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Swaran Singh, Shri
Thengal, Shri Nallakoya
Thomas, Shri A.M.
Tiwary, Shri D.N.
Tiwary, Shri K.N.
Tiwary, Shri R.S.
Tripathy, Shri Krishna Deo
Uikey, Shri
Ulaka, Shri Ramachandra
Upadhayaya, Shri Shiva Dutt
Vaishya, Shri M.B.
Valvi, Shri
Varma, Shri Ravindra
Veerappa, Shri
Vyas, Shri Radhelal
Yadab, Shri, N.P.
Yadav, Shri Ram Harkh
Yadava, Shri B.P.

Mr. Speaker: The result of the division is:

Ayes 20; *Noes* 179.

The motion was negatived.

Mr. Speaker: Now, I put Mr. Dixit's motion. The question is:

"That the matter be referred to the Committee of Privileges."

Shri Surendranath Dwivedy: My motion should first be put.

अध्यक्ष महोदय : पहले यह कमेटी को जायगा तभी तो आप का मोशन आयगा ।

Shri Vasudevan Nair (Ambalapuzha): Will he explain how it can be done? There is one Sunday.

Mr. Speaker: The question is:

"That the matter be referred to the Committee of Privileges."

The Lok Sabha divided.

Division No. 25] **AYES** **[11.49 hrs.**

Abdul Rashid Bakshi, Shri
Abdul Wahid, Shri T.
Achal Singh, Shri
Achuthan, Shri
Alva, Shri A.S.
Alva, Shri Joachim
zad, Shri Bhagwat Jha
Bal Krishna Singh, Shri
Balmiki, Shri
Barman, Shri P.C.
Bhakt Darshan, Shri
Bist, Shri J.B.S.
Brij Basi Lal, Shri
Chakraverti, Shri P.R.
Chanda, Shrimati Jyotsna
Chandak, Shri
Chandrabhan Singh, Dr.
Chandrikl, Shri
Chaturvedi, Shri S.N.
Chaudhry, Shri Chandramani Lal
Chaudhuri, Shrimati Kamala
Chavan, Shri D.R.
Chavda, Shrimati Johraben
Das, Shri B.K.
Das, Shri N.T.
Dass, Shri C.
Desai, Shri Morarji
Deshmukh, Shrimati Vimla
Deshmukh, Shri B.D.
Dulcshwar Meena, Shri
Dighe, Shri
Dirir, Shri G.N.
Dubey, Shri R.G.
Dwivedi, Shri M.L.
Gahmari, Shri
Gajraj Singh Rao, Shri
Govind Das, Dr.
Gowdh, Shri Veeranna
Guha, Shri A.C.
Gupta, Shri Shiv Charan
Hansda, Shri Subodh
Hanumanthaiya, Shri
Harvani, Shri Ansar
Hazarika, Shri J.N.
Heda, Shri
Jadhav, Shri Tulsidas
Jagjivan Ram, Shri
Jayaraman, Shri
Jedhe, Shri
Joshi, Shri A.C.
Joshi, Shrimati Subhadra
Kamble, Shri
Kappen, Shri
Kedaria, Shri C.M.
Keishing, Shri Rishang
Khan, Shri Shahnawaz
Kindar Lal, Shri
Kisan Veer, Shri
Koroki, Shri Liladhar
Koujalgi, Shri H.V.
Kripa Shankar, Shri
Krishna, Shri, M.R.
Kureel, Shri B.N.
Laskar, Shri N.R.
Linga Reddy, Shri H.C.
Lonikar, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahida, Shri Narendra Singh
Mali Mariyappa, Shri
Malhotra, Shri Inder J.
Mandal, Dr. P.
Mantri, Shri D.D.
Mansuriya Din, Shri
Mathur, Shri Harish Chandra
Mathur, Shri Shiv Charan
Mehrotra, Shri Braj Bihari
Mehta, Shri J.R.
Melkote, Dr.
Menon, Shri P.G.
Mirza, Shri Baker Ali
Mishra, Shri Bibhuti
Mishra, Shri M.P.
Mohammad Yusuf, Shri
Mohanty, Shri Gokulananda
Mohsin, Shri
Morarka, Shri
More, Shri K.L.
Muthiah, Shri
Naidu, Shri V.G.
Naik, Shri D.J.
Naskar, Shri P.S.
Nesamony, Shri
Niranjan Lal, Shri
Pandey, Shri R.S.
Pandey, Shri Vishwa Nath
Panna Lal, Shri
Patel, Shri Chhotubhai
Patel, Shri N.N.
Patil, Shri D.S.
Patil, Shri M.B.
Patil, Shri S.B.
Patil, Shri S.K.
Patil, Shri T.A.
Pattabhi Raman, Shri C.R.
Prabhakar, Shri Naval
Pratap Singh,
Puri, Shri D.N.
Raju, Shri C....
Raju, Shri D.B.
Ram, Shri T.
Ram Sewak, Shri
Ram Swarup, Shri
Ramdhani Das, Shri
Rameshekhar Prasad Singh, Shri
Rane, Shri
Ranga Rao, Shri
Ranjit Singh, Shri
Rao, Shri Hanmanth
Rao, Shri Jagannatha
Rao, Shri Muthyal
Rao, Shri Rajagopala
Rao, Shri Ramapathi
Rao, Shri Rameshwar
Rattan Lal, Shri
Raut, Shri Bhola
Ray, Shrimati Renuka
Reddi, Dr. B. Gopala
Reddiar, Shri
Reddy, Shri Narayan
Reddy, Shri Ramkrishna
Reddy, Shri Surender
Roy, Shri Bishwanath
Sahu, Shri Rameshwar
Saigal, Shri A.S
Samnani, Shri
Sanji Rupji, Shri
Satyabhama Devi, Shrimati
Sen, Shri P.G.
Shah, Shri Manubhai
Shah, Shrimati Jayaben
Shakuntala Devi, Shrimati
Shankaraiya, Shri
Sharma, Shri A.P.
Sharma, Shri D.C.
Sharma, Shri K.C.
Sheo Narain, Shri
Shree Narayan Das, Shri
Siddananjappa, Shri
Siddhanti, Shri Jagdev Singh
Siddiah, Shri
Sidheshwar Prasad, Shri
Singh, Shri K.K.
Sinha, Shrimati Ramdulari
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sivappraghasam, Shri Ku.
Snatak, Shri Nardeo
Soundaram Ramachandran, Shrimat
Subbaraman, Shri
Subramanyam, Shri T.
Somat Prasad, Shri
Swaran Singh, Shri
Thengal, Shri Nallakoya
Thomas, Shri A.M.
Tiwary, Shri D.N.
Tiwary, Shri K.N.
Tripathi, Shri Krishna Deo
Uikey, Shri
Ulaka, Shri Ramachandra
Upadhayaya, Shri Shiva Dutt
Vaishya, Shri, M.B.
Valvi, Shri
Varma, Shri Ravindra
Veerappa, Shri
Vyas, Shri Radhelal
Yadab, Shri N.P.
Yadav, Shri Ram Harkh.
Yadava, Shri B.P.

NOES

Banerjee, Shri S.M.	Kunhan, Shri P.	Swamy, Shri Sivamurthi
Bhattacharya, Shri Dinen	Lohia, Dr. Ram Manohar	Tiwary, Shri R.S.
Bheel, Shri P.H.	Mukerjee, Shri H.N.	Vishram Prasad, Shri
Chatterjee, Shri H.P	Nair, Shri Vasudevan	Warior, Shri
Dharmalingam, Shri	Patnayak, Shri Kishen	Yadav, Shri Ram Sewak
Gulshan, Shri	Roy, Dr. Saradish	Yashpal Singh, Shri
Gupta, Shri Kashi Ram	Singh, Shri J.B.	

Mr. Speaker: The result of the division is:

Ayes: 179; *Noes* 20

The motion was adopted.

श्री च० ला० चोधरी (मथुरा) : मेरा वोट ठीक नोट नहीं हुआ है । मशीन ने ठीक काम नहीं किया है ।

श्री जगदेव सिंह सिद्धान्ती (झज्जर) : मेरी मशीन भी ठीक काम नहीं कर रही है ।

Mr. Speaker: That would be taken into account. Mr. Dwivedy has said that the Committee be asked to report by Monday. That would be physically impossible.

Shri Surendranath Dwivedy: My amendment is that the Committee should sit tomorrow, although it is a Sunday because the last day available to us is Monday and there is the desire that this matter should be disposed of before we adjourned. If the Committee reports by Monday, the House will have the opportunity to discuss that matter also.

Shrimati Renu Chakravartty: What is the point in sending it to the Committee of Privileges? Let us understand it. We understand that they have a stick and they have got a big handle to beat. But whether they will beat at all, I do not know. The point now is this. What is going to happen to this Privilege Committee's report? In the lame duck session, you will come and we will have no time to take it up because we cannot take up any extraneous matters. Where do we stand?

श्री मधु लिमये : अब अध्यक्ष महोदय, इस के बारे में मुझे सुनिए ।

डा० राम मनोहर लोहिया : अध्यक्ष महोदय, इस समिति में इस के ऊपर पूरी तरह से बहस होनी चाहिए । वह रपट कल आये या साल भर में आये, वर्षों में आये इससे मतलब नहीं है लेकिन इस के ऊपर पूरी तरह से जांच होनी चाहिए । कहीं ऐसा न हो जाय कि संक्षिप्त रूप से किसी तरह से फैसला कर दिया जाय . . .

अध्यक्ष महोदय : यह मैं भी इस से इत्तफाक करता हूं ।

डा० राम मनोहर लोहिया : मधु लिमये को बुलाया जाना चाहिए । मधु लिमये को अपनी पूरी बात कहने का मौका दिया जाना चाहिए और अगर हमारे जैसे आदमी कुछ कहना चाहें तो मुझको भी मौका मिलना चाहिए ।

अध्यक्ष महोदय : अब यह तो कमेटी की बात होगी । कमेटी के ऊपर में कोई पाबन्दी नहीं लगा सकता ।

मगर यह मुनासिब नहीं होगा कि उन को परसों तक कहा जाय कि परसों रिपोर्ट आनी चाहिए । यह उनके ऊपर छोड़ दिया जाय ।

Shri N. C. Chatterjee (Burdwan): I want to point out that it is a physically impossible burden on us, on the committee of privileges. We cannot possibly do justice to it because it has got to be thrashed out properly; it will take time. We will have to hear Mr. Limaye and Dr. Lohia and others also.

अध्यक्ष महोदय : मिस्टर बाबू राम भगत । . . . .

अब वह चिट्ठी, चूंकि उसका जिक्र आया इसलिए लीडर आफ दि हाउस उस चिट्ठी

को हाउस को पढ़ दें ताकि हाउस को और कंट्री को पता चल जाय और वह उस के बारे में स्वयं जज कर लें। यह वह चिट्ठी है जिसके बारे में लोहिया साहब ने जिक्र किया था और जिसे उन्होंने दिखलाया था कि यह डाक्यूमेंट है उनके हाथ में स्पीकर साहब के खिलाफ पटनायक जी ने इसे आपके पास भेजा था। मैं समझता हूं कि हाउस को और कंट्री को यह मालूम होना चाहिए कि वह चिट्ठी क्या है। . . . (व्यवधान) . . . यह वह चिट्ठी है जिसको उन्होंने दिखलाया था। यह है सरदार हुकम सिंह, The Speaker, Lok Sabha. की तरफ से This is marked personal and confidential.

An hon. Member: What is the date?

The Leader of the House (Shri Satya Narayan Sinha): It is, New Delhi, 19th February, 1964. It reads:

"Dear Shri Bhagavati,

One Mr. Sardul Singh of G. S. Cables was given temporary allotment of a quarter for three months only. He has migrated from my home district and, therefore, his mother came to me and explained the circumstances and that his family is in urgent necessity of a quarter out of turn.

I am just drawing your attention to this case to see whether anything can be done for this family . . .

Shri D. C. Sharma (Gurdaspur): This does not mean anything.

Shri Satya Narayan Sinha:

"I am sending herewith a copy of the original letter of temporary allotment."

Yours sincerely".

अध्यक्ष महोदय : अब मैम्बर साहबान और कन्ट्री जज कर लेंगे कि मैं ने इस में क्या किया है (व्यवधान)

Shri R. S. Pandey (Guna): It is not only that Dr. Lohia has created a sensation by showing this letter. Here is that letter. I would invite the Leader of the House to see the letter. By that letter, Dr. Lohia has in fact tried to show that there might be something very bad, something sensational, something unfortunate, in that letter that was written by you and that in the contents you wanted to support a movement and just request the Government that some concession has to be shown. Let the country know what kind of attitude is taken by Dr. Lohia towards the highest, august person who is presiding over the destiny of this country.

Some hon. Members: Shame, shame (*Interruption*).

डा० राम मनोहर लोहिया : अब यह झुण्ड चुप हो गया है। यह कायदे-कानून की बात नहीं रही, यह सिफारिश की बात हो गई है। यह खत करप्ट-प्रेक्टिसिज में आ सकता है।

श्री सत्य नारायण सिन्हा : मैं हाउस की इन्फार्मेशन के लिए और जो नहीं जानते हैं, उनके लिए साफ़ करना चाहता हूं कि जिस बात पर बहुत स्ट्रेस दिया जाता है —आउट-आफ-टर्न एलाटमेंट, मिनिस्टर लोगों को अख्तियार है कि वह आउट-आफ़-टर्न एलाटमेन्ट दे सकते हैं।

श्री राम सेवक यादव : जब कोई सिफारिश करेगा, तब होगा न आउट-आफ़-टर्न एलाटमेन्ट।

Shrimati Renu Chakravartty: If it is a normal thing, why should it be marked confidential?

श्री मधु लिमये : इस का खुलासा दीजिये कि यह कान्फीडेन्शियल क्यों था?

11.53 hrs.

PAPERS LAID ON THE TABLE

NOTIFICATION UNDER CUSTOMS ACT

The Minister of State in the Ministry of Finance (Shri B. R. Bhagat): Sir, I beg to lay on the Table—

(1) A copy of Notification No. G.S.R. 1795 published in

Gazette of India dated the 26th November, 1966, under section 159 of the Customs Act, 1962. [*Placed in Library. See* No. LT-7504/66].

(2) A copy of Notification S.R.O. No. 431/66, published in Kerala Gazette dated the 22nd November, 1966, making certain amendments to the Kerala General Sales Tax Rules, 1963, under sub-section (3) of section 57 of the Kerala General Sales Tax Act, 1963, read with clause (c) (iv) of the Proclamation dated the 24th March, 1965, issued by the Vice-President, discharging the functions of the President, in relation to the State of Kerala. [*Placed in Library. See* No. LT-7505/66].

ANNUAL REPORT OF AIR INDIA, 1965-66 AND AMENDMENT TO KERALA VEHICLES RULES

The Minister of State in the Ministry of Food, Agriculture, Community Development and Co-operation (Shri Govinda Menon): Sir, on behalf of Shri C. M. Poonacha, I beg to lay on the Table—

(1) A copy of the annual Report of the Air India for the year 1965-66, under sub-section (2) of section 37 of the Air Corporation Act, 1953. [*Placed in Library. See* No. LT-7506/66].

(2) A copy of Notification S.R.O. No. 427/66, published in Kerala Gazette dated the 15th November, 1966, making certain amendments to the Kerala Motor Vehicles Rules, 1961, under sub-section (3) of section 133 of the Motor Vehicles Act, 1939, read with clause (c) (iv) of the Proclamation dated the 24th March, 1965, issued by the Vice-President discharging the functions of the President, in relation to the State of Kerala. [*Placed in Library. See* No. LT-7507/66].

KERALA UNIVERSITY (AMENDMENT) ACT

The Deputy Minister in the Ministry of Education (Shri Bhakt Darshan): Sir, I beg to lay on the Table a copy of the Kerala University (Amendment) Amendment Act, 1966, (President's Act No. 11 of 1966) published in Gazette of India dated the 5th November, 1966, under sub-section (3) of section 3 of the Kerala State Legislature (Delegation of Powers) Act, 1965. [*Placed in Library. See* No. LT-7508/66].

A COPY OF ANNUAL REPORT OF INDIAN LAC CESS COMMITTEE, 1963-64, AND INDIAN CENTRAL SPICES AND CASHEWNUT COMMITTEE, ETC.

Shri Govinda Menon: On behalf of Shri Shyam Dhar Misra, I beg to lay on the Table—

(1) (i) A copy of the Annual Report of the Indian Lac Cess Committee for the year 1963-64 (Hindi version).

(ii) A statement showing the reasons for delay in laying the above Report.

[*Placed in Library. See* No. LT-7509/66].

(2) A copy of the Annual Report of the Indian Lac Cess Committee for the year 1964-65 (Hindi version). [*Placed in Library. See* No. LT-7510/66].

(3) A copy of the Annual Report of the Indian Central Jute Committee for the year 1964-65. [*Placed in Library. See* No. LT-7511/66].

(4) (i) A copy of the Annual Report of the Indian Central Spices and Cashewnut Committee for the year 1963-64.

(ii) A statement showing the reasons for delay in laying the above Report.

[*Placed in Library. See* No. LT-7512/66].

11.54½ hrs.

COMMITTEE ON SUBORDINATE LEGISLATION

MINUTES

Shri Krishnamoorthy Rao (Shimoga): I beg to lay on the Table the Minutes of the Seventeenth and Eighteenth sittings of the Committee on Subordinate Legislation.

11.54¾ hrs.

MESSAGES FROM RAJYA SABHA

Secretary: Sir, I have to report the following messages received from the Secretary of Rajya Sabha:—

(i) "In accordance with the provisions of rule 127 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on the 30th November, 1966, passed, in accordance with the provisions of article 368 of the Constitution of India, without any amendment, the Constitution (Nineteenth Amendment) Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 22nd November, 1966."

(ii) "In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Kerala Appropriation (No. 3) Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 22nd November, 1966, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

(iii) "In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Kerala Appropriation (No. 4) Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 22nd November, 1966, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

(iv) "In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Kerala Appropriation (No. 5) Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 22nd November, 1966, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

(v) "In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Appropriation (Railways) No. 3 Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 21st November, 1966, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

(vi) "In accordance with the provisions of sub-rule (6) of rule 186 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Appropriation (Railways) No. 4 Bill, 1966, which was passed by the Lok Sabha at its sitting held on the 21st November, 1966, and transmitted to

the Rajya Sabha, for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

11.55½ hrs.

RESIGNATION BY MEMBER

(*Shri Laxmi Dass*)

Mr. Speaker: I have to inform the House that Shri Laxmi Dass, an elected Member of the Lok Sabha from the Miryalguda constituency of Andhra Pradesh has resigned his seat in the Lok Sabha with effect from 4.00 P.M. on 2nd December, 1966.

11.55¾ hrs.

COMMITTEE ON SUBORDINATE LEGISLATION

SIXTH REPORT

Shri Krishnamoorthy Rao (Shimoga): I beg to present the Sixth Report of the Committee on Subordinate Legislation.

11.56 hrs.

ESTIMATES COMMITTEE

HUNDRED AND EIGHTH REPORT

Shri A. C. Guha (Barasat): I beg to present the Hundred and eighth Report of the Estimates Committee on action taken by Government on the recommendations contained in the Eightieth Report of the Estimates Committee on the Ministry of Food, Agriculture, Community Development and Cooperation (Department of Agriculture)—Indian Grassland and Fodder Research Institute, and Soil Conservation Research, Demonstration and Training Centres.

11.56¼ hrs.

INDIAN TARIFF (SECOND AMENDMENT) BILL

The Minister of Commerce (Shri Manubhai Shah): I beg to move:

"That the Bill further to amend the Indian Tariff Act, 1934, be taken into consideration."

Sir, this Bill mainly seeks to amend the First Schedule to the Indian Tariff Act, 1934, in order to give effect to Government's decisions on certain recommendations of the Tariff Commission. Hon. Members will have observed from the Statement of Objects and Reasons attached to the Bill that the Bill seeks to (a) continue protection beyond 31st December, 1966 in the case of sericulture industry and (b) discontinue protection with effect from the 1st January, 1967 to (i) antimony, (ii) ACSR (Aluminium Conductor Steel Re-inforced) and AAC (All Aluminium Conductor) (iii) Cotton Textile Machinery and (iv) Piston Assembly Industries.

Copies of the Tariff Commission's reports on all these industries and of Government Resolutions issued on these reports have already been laid on the Table of the House and notes on each of these industries have also been circulated for the information of the Members of the House. The House will be able to appreciate that the policy of continuously discontinuing protection has been incorporated in this Bill. Except in one industry, the rest of the five industries are sought to be de-protected.

Sir, on 1st January, 1966, the number of protected industries stood at eight. This number includes industries on which protection is due to expire at the end of this year *viz.* 31st December, 1966. Protection to (i) Piston Assembly, (ii) A.C.S.R. and A.A.C., (iii) Cotton Textile Machinery and (iv) Sericulture industries is due to expire on 31st December, 1966 whereas Antimony Industry was protected upto 31st December, 1968 subject to review by the Tariff Commis-

[Shri Mannbhai Shah].

sion in 1966. The Commission recommended de-protection to the (i) ACSR & AAC and (ii) Cotton Textile Machinery industries with effect from 1st January, 1967 as these industries have made sufficient progress to withstand competition from imports and to stand on their own legs. The Commission has also recommended withdrawal of protection from the Antimony industry in its review report. Sir, in the case of Piston Assembly industry, the Tariff Commission reconsidered the question of protection in the light of devaluation and recommended the de-protection of this industry as well.

As for the Sericulture Industry, Sir, the Commission has recommended the continuance of protection for a further period of three years upto 31st December 1969. Government have accepted the recommendations of the Tariff Commission for de-protection of the four industries and for the continuance of protection to Sericulture industry upto 31st December, 1969 as detailed above.

The background in respect of all these five industries is detailed in the notes circulated for the information of the Members.

With these words, Sir, I beg to move that the Bill be considered.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Indian Tariff Act, 1934, be taken into consideration."

Shri Sham Lal Saraf (Jammu and Kashmir): Sir, I welcome this Bill particularly for the reason that the hon. Minister, on the recommendation of the Tariff Commission, has recommended continued protection for the sericulture industry for three years. I do not know on what basis the Tariff Commission has recommended only three years, since this industry cannot even now stand on its legs compared to the sericulture industry that is being run in the advanced countries of the world.

Sir, I wish the hon. Minister, while replying to the debate, tells this House and through this House the country at large what steps are being taken in order to put this sericulture industry on a strong basis. The Government of India set up a board known as the Central Silk Board and it has been functioned nearly for the last 17 to 18 years. But to my mind, even to this day, I cannot say that this industry has reached a stage where it can stand shoulder to shoulder with any advanced country in the world. There are many a reason for that. May I submit to the hon. Minister that he will kindly keep these things in mind?

12 hrs.

The sericulture industry is a decentralised industry as far as the Government of India is concerned; it is a State subject, and the States are running this industry in their own States. But very wisely the Central Government had set up a Board in order to co-ordinate the activities of this industry all over the country. So far as coordination is concerned, it has achieved certain things, but the most important areas are even now untouched. To this day I cannot say that even the Central Government have taken enough steps for adequate research so far as this industry is concerned. I am not sure to this day whether we have been able to locate the varieties of mulberry trees and which of the mulberry species would be suitable for a particular climate, for a particular area. The Minister may tell us that they have set up some research centres in Behrampore and other places. But though I am associated with this industry for a long time, I am not sure that we have been able to locate the mulberry species which can be said to have a really good leaf content and also the quality of leaf that can be said is really nutritive.

We have three types of silk worm races: Univoltine, Biovoltine and Multivoltine. In spite of the fact that some progress has been achieved in Mysore, Kashmir and West Bengal, we are not quite sure about it having achieved a progress that it deserved.

In Japan they have isolated and recommended species of mulberry that give them wonderful results. That is how Japan has made great strides in this industry and is one of the foremost countries in sericulture in the world. Then, there are silk worm races. To this day we are not absolutely sure which are the silk worm races which can be said to have acclimatised to particular areas and States that can give good results. I come from a State which is very well-known for sericulture. But to this day I am not sure if the sericulture experts in my State or in Mysore or in any other State can say that we can compare ourselves with any advanced country in the world in sericulture and have been able to isolate and find out the silk worm races that can be said to be fully acclimatised to the conditions obtaining in our country.

The third stage is that of reeling. Today the Filature silks are supposed to be the best in the world. There are three types of silk: Charkha, Cottage Basin and Filature I have not much to say so far as the Charkha and Cottage Basin varieties are concerned. But so far as silk is concerned, the quality must be improved. We have not reached that stage and that is a matter for the Minister to go into why we have not come to a stage when we can compare our quality with international standards. There are certain lacunae here and they will have to be removed. Unless a number of steps are taken, it will be difficult for us to compete with any other country in this industry like Japan, China and Russia which has also come into the field now. What have we done with regard to that? The Central Government has played and rightly so a limited roll in taking this industry ahead. Mostly things have been done by the State Governments. But my experience is that the State Governments do not show that real interest, including my own State, I know when certain information is asked about certain things and certain actions to be taken by the States, hardly very few States are prepared to give that information and take that action.

I would very strongly recommend that this protection should continue for at least 10 years. Three years is nothing. At the same time, the Central Government must find out why the State Governments do not cooperate, and why when they give certain pledges and promises and announce some plans and targets, those targets have not been achieved so far. Unless these things are done, there is no meaning in the Minister asking this House to give protection for 3 years. Protection should certainly be given for at least 10 years and the States also must be asked to fully cooperate. I hope the Minister will say something about that when he replies.

Woven silken fabrics are so much in demand all over the world. Silk, even today, is said to be the queen of fabrics. But I personally feel that there is much more scope for its export. We will not be able to export more unless the quality of the reeled silk are improved and it can stand international tests. Luckily we have certain advantages in our country because of the traditions of the past. From days immemorial our fabrics are known all over the world. We can count very much on that advantage. Three years back I was in Sweden and I met the great economist, Dr. Merdyel, whose wife was an ambassador of her country here. He told me, I know you come from Kashmir; your alchemy is Kashmir silk and Kashmir wool; if you can sell these two items . . .

Shri Ranga (Chittoor): Kashmir people also?

Shri Sham Lal Saraf: They cannot be sold.

We have Banaras brocades and a number of things. But we can compete in the international market only if the quality of our goods is improved.

I really congratulate the Minister for having been able to do away with

[Shri Sham Lal Saraf].

the protection for some more industries, about which I do not want to take much time.

Shri Ranga: Sir, I am glad to be able to support this Bill. I want this protection to be given to the silk industry, which is very badly in need of it. At the same time, there is much in what Mr. Saraf has said just now. Although this protection has been there for more than 15 years, it is unfortunate that the State Governments did not do as much as they were expected to do by the Union Government to improve the status of all those who are engaged in this silk industry. In my own constituency of Chittoor in Andhra and other districts, in Vishakhapatnam, Srikakulam and also in Salem, Coimbatore and other places in Tamilnad, this silk industry is a very valuable addition to the social economy of the people there. I have myself seen the peasants keeping silk worms, helping them to grow, getting all the equipment that is necessary in order to feed them and to look after them, and after they develop these cocoons, to open the cocoons with the aid of varius chemicals, hot water and various other processes, put it on the reel and thereafter give it over to the weavers, to the merchants and other people. This is a very valuable addition to their slender income.

But, unfortunately, so little has been done to develop the feeds that are necessary like mulberry as well as castor leaves and various other new feeds also that can be introduced. Some experiments have been made and some attempts have been made, also, to spread the results of these experiments, but not anything significant has been done in order to develop it. Take, for instance, Andhra itself. Beyond having one or two officers they have done very little indeed through the State Government.

I would like my hon. friend not to stop short of getting this Bill passed and saying to himself that the necessary protection has been given to this industry, but to use his good offices with the Industries Ministry here, the Department of Small-scale Industries as well as the concerned ministries in the States, and see that as much money as possible is placed at the disposal of the research and development of sericulture industry and in that way help our rural economy.

Shri D. C. Sharma (Gurdaspur): Sir, when I visited Japan some time back I had the good fortune of going to a silk factory. The manager of that factory said to me that the test of civilization in this world is the number of yards that a country uses so far as silk cloth is concerned. He gave me statistics about the yards of silk used in various countries of the world. Of course, I found that my country was at the very bottom. But whether it is a test of civilization or not, the fact remains, that when I came back from the country and met the Chief Minister of my State, he said that there is a great deal of scope for silk industry in the State of punjab especially when it has so much of sub-mountainous districts—it had many mountainous districts but now that area has gone to Himachal Pradesh—on account of which this industry can be developed. He made a big drive among the people that they should grow mulberry trees. I remember when I was speaking on the Independence Day in one place in my constituency and somebody drew my attention to the problem of unemployment and to the problem of under-employment, I happened to mention that those persons living in the villages should try to grow mulberry trees and thereby they should start the process of sericulture in all its scientific aspects to which my hon. friend, Shri Saraf has referred.

But I must say that this kind of protection will mean only a kind of pro-

tection on paper. I want that this protection should be translated into reality. There is a sericultural farm in my constituency also. If I were to visit that farm—I will refrain from visiting that farm because if I go I will feel depressed—I will not feel happy. Sericulture has been treated as a Cinderella. There was a time when *sanyasis* used to wear silken robes, there was a time when ladies used to wear silken clothes, there was a time when we used to export silk, there was a time when Dacca silk and *muslins* were known all over the world. But now silk is going out of use only because there are no mulberry trees, only because the silk factories do not get the raw material. In Amritsar we used to have so many of these silk factories. They were run on a cottage industry basis, on a small-scale industry basis. I have myself visited some of those small factories. But all of them have gone out of use. They have gone out of use not because the people have discontinued the habit of wearing silk, not because the people have some sort of an aversion to wearing silk, not because people have taken to other kinds of cloth, but because they do not get the raw material, because the governments of our States are not interested.

Sir, I am very happy that Andhra is doing something. I feel very glad that Mysore is doing something. I know there are friends from Bihar who want to bring in some kind of silk from there. Sometimes I envy their clothes made of silk. But the fact of the matter is, we grant protection to these industries and these protections are pigeon-holed in the Ministry of Commerce. They go on gathering dust for a number of years, and then after about ten years we wake up. Some Minister wakes up—Ministers are always changing, fortunately or unfortunately—and says that there is a case for giving protection to this industry. My hon. friend will have statistics to show to me that the number of yards of silk produced in India has gone up tremendously. Of course, statistics are there only for the consumption of these ministries. I do not believe in statistics. When I go in the market, when I visit the people, there are some who come to my house and tell me that we produce 10:5 chattaks of foodgrains per head in this country. Where do they go? What happens to them?

Therefore, statistics are a kind of sop which is given to educated persons and also to others.

Therefore, I would say that silk industry is an industry which was practised in the Punjab and which will be practised now in the new Punjab. I want that the protection which is given to this industry should be translated into actual practice. I would like to ask the hon. Minister how many sericulture farms he has visited during the last three or four years he has been in the Ministry of Commerce.

Shri Manubhai Shah: Twenty-five.

Shri D. C. Sharma: Under what conditions have you visited those farms? When you visited them things might have been kept as bright as possible on account of your visit. I know there is window-dressing whenever a Minister goes on a visit. These farms should be seen in their raw shape, in their undeveloped shape, in the crude state in which they exist. That does not happen. I know the Minister means well by us, he means well by the new Punjab and he also means well by this industry and the people who are employed in this industry. I would request him to see to it that this protection which we give to these industries is made the fullest use of so that our silk product becomes one of the most covetted items of export all over the world.

श्री शिवमूर्ति स्वामी (कोप्पल) : अध्यक्ष महोदय, इस बिल में सिल्क को जो संरक्षण दिया जा रहा है, मैं उसका स्वागत करता हूं । इस सिलसिले में मैं वीवर्ज और कारीगरों की चन्द मुश्किलात को पेश

[श्री शिवमूर्ति स्वामी]

करना चाहता हूं । जैसा कि आप जानते हैं, हमारे मुल्क में हैंडलूम के हर एक कपड़े के उत्पादन में सिल्क इस्तेमाल होता है । हैंडलूम वीवर्ज और जुलाहों की बहुत दिनों से यह मांग है कि टैक्सटाइल कमिश्नर के हाथ में जो डिस्ट्रीब्यूशन का अधिकार दिया गया है, उस को हटा कर हैंडलूम इंडस्ट्री का एक अलग कमिश्नर मुकर्रर किया जाये । यह मांग हैंडलूम वीवर्ज की कांफ्रेंस में भी पेश की गई है । इस की वजह यह है कि इस सम्बन्ध में बहुत अन्याय होता है । प्रोटेक्शन तो केवल काग़ज पर ही रहती है, लेकिन अमल में इम्पोर्ट किये जाने वाले सिल्क से बिल्कुल काम्पीटीशन होता है । ग़ैरमुमालिक से जो इटैलियन सिल्क इम्पोर्ट किया जाता है, उस पर प्रोटैक्शन ड्यूटी इतनी कम होती है कि थोक व्यापारी उस को इम्पोर्ट कर के उस की ब्लैक मार्केटिंग करते हैं ।

टैक्सटाइल कमिश्नर के यहां इम्पोर्ट और एक्स्पोर्ट लाइसेंस के इन्तजाम में बहुत गड़बड़ है । इसी प्रकार सिल्क की तक्सीम के विषय में भी बहुत गड़बड़ है । आवश्यकता इस बातकी है कि हैंडलूम की को-आपरेटिव सौसायटीज को डायरैक्ट लाइसेंस दिया जाये, बजाये इस के कि थोक व्यापारियों को लाइसेंस दिये जायें और वे उस सिल्क की ब्लैक मार्केटिंग करें । मैं मंत्री महोदय का ध्यान इस शिकायत की तरफ़ खींचना चाहता हूं कि बाहर से जो माल एक रुपये में मंगाया जाता है, वह जुलाहों और एक्चुअली वीव करने वालों के हाथ में चार रुपये में पड़ता है, यानी उस का दाम चार गुना बढ़ जाता है । इस लिए यह जरूरी है कि वह सिल्क एक्चुअली काम करने वालों के हाथ में डायरेक्ट पहुंचे । मैं मंत्री महोदय को बताना चाहता हूं कि बहुत से हैंडलूम की को-आपरेटिव सौसाइटीज के डायरैक्टर्स को बम्बई में बैठ कर कम से कम पांच छः हजार रुपया हर साल ख़र्च करने के बाद भी इम्पोर्टिड सिल्क का कुछ भी माल नहीं मिला और बीच के पांच छः दलाल ही सारे माल को खा गए । इस तरह की मुश्किलात को ध्यान में रखते हुए मेरी यह पुरजोर मांग है कि टैक्सटाइल कमिश्नर से हैंडलूम इन्डस्ट्री को सिल्क के डिस्ट्रीब्यूट करने का काम ले लिया जाये ।

सिल्क इंडस्ट्री को मिक्स करने के लिए जो काटन यार्न दिया जाता है, वह बहुत खराब क़िस्म का होता है । इसलिए वह धंधा ख़त्म हो जा रहा है और उस में लगे हुए लोग बेकार होते जा रहे हैं । बहुत से शहरों में सिल्क इंडस्ट्री सिर्फ़ मशीनरी या पावरलूम से चलती है । वह तो चल रही है, लेकिन मुल्क भर में जो 28 लाख हैंडलूम वीवर्ज हैंडलूम पर निर्भर करते हैं, उन की बहुत मुश्किलात हैं ।

मैं मंत्री महोदय से यह अर्ज करना चाहता हूं कि इस काम को टैक्सटाइल कमिश्नर के दायरे से हटा कर हैंडलूम का एक अलग कमिश्नर बनाया जाये और सिल्क की इंडस्ट्री को डीसैंट्रलाइज कर के काटेज इंडस्ट्री की तरह उस को बढ़ावा और संरक्षण दिया जाये । सिल्क को जो तीन साल के लिए संरक्षण दिया जा रहा है, वह अवधि बहुत कम है । अगर उस से ज्यादा अवधि रखी जाती, तो मैं उस का स्वागत करता ।

Shri H. C. Linga Reddy (Chikballapur): Sir, I rise to welcome this Bill, the Indian Tariff (Second Amendment) Bill, and while so doing I would like to say a few words about sericulture.

When we think of protection for this industry, it is necessary for us to think as to how long we should think of depending upon protective measures. The protection is there for the last more than 15 years and I wish it was for more than three years, at least for a period of ten years. But before we think of protection for the silk industry, it is necessary to think as to how

the industry is progressing in the country at present.

I come from Mysore State where we have 80 per cent of the sericulture of India and I am in the Silk Board also. The Silk Board, I am sorry to say, is powerless and, as it is headed by an officer-partime chairman, is not in a position to devote full time for the carrying out of schemes under sericulture. The amounts that had been assigned for the development of sericulture under the Third Five Year Plan and allotted to several States have not been spent even to the extent of 50 per cent except in Mysore State where the percentage of performance is about 80 per cent.

Also, we have its headquarters at Bombay, in a State in which there is no sericulture at all. Probably, the Government thought of locating the headquarters of the Silk Board at Bombay because the Textile Commissioner happens to be the Chairman of the Central Silk Board. Now, though the Government have decided that it should have a full-time chairman about three months ago, it is very unfortunate that the Central Government has not been in a position to appoint a full-time Chairman, whether official or non-official. To a question addressed to Government the reply was that a competent person is under their consideration. But for how long? It is very necessary that a competent person well versed in sericulture, whether official or non-official is immediately posted so that he may think of executing the schemes of sericulture more expeditiously in the several sericultural areas.

Though we have been requesting that the headquarters, at least after the appointment of the wholetime chairman, be transferred to a more predominantly sericultural area like Mysore, this has not been done at all and the reply given by the Government is that there are difficulties. What can be the difficulty? Formerly, the headquarters of the Central Silk Board was Mysore. We have 80 percent of the country's sericulture in Mysore State only and to continue to have the headquarters at Bombay, even after the Government has resolved to think of appointing a full-time chairman, I think is not called for. It is high time that the Government thinks of changing the headquarters to an area where more sericulture schemes have to be executed.

Shri Saraf was mentioning that the mulberry leaf has to be developed if sericulture has to be improved and all that. To do so it is necessary that a number of irrigation wells are sanctioned. 80 per cent of the sericulture in Mysore area is rain-fed. If irrigation wells are given and if the leaf is improved, the quality of silk also can be improved. In this direction the Government has not paid much attention at all.

It is very necessary that there should be a sufficient number of co-operatives. The Government of Mysore decided to have cocoon markets for the sale of cocoons, but unfortunately the cocoon markets have not come into existence at all.

Though the sericulture industry in this country has been thriving for the last 15 to 20 years and though protection is being given by the Tariff Commission and the Government, we are still importing foreign silk. We have not been in a position to improve the quality of silk here and we are not in a position to stand foreign competition at all. To add to these difficulties we are importing silk from Japan, China and other countries. It is high time that the Government thinks of banning the import of silk from other countries, so that indigenous silk may have a good market here, as early as possible.

A scheme for Rs. 13 crores for sericultural development in the Fourth Five Year Plan had been sent by the Government of Mysore, but only a scheme for Rs. 3 crores has been approved by the Central Government and

[Shri H. C. Linga Reddy]

only a povision for Rs. 11 crores has been made in the Fourth Five Year Plan for the whole of India. This amount is not sufficient. Before we think of protective measures it is necessary that we should think of improving the internal production and the quality of silk also and to see that sericultural schemes are executed as early as possible. If this has to be done effectively, a whole-time officer has to be immediately posted and the headquarters have to be shifted from Bombay to Mysore where we have 80 per cent of sericulture.

So far as protection to cotton mills is concerned, I am glad Government have been taking very active measures but even here it is necessary that the Government should go to the rescue of mills that are being closed. In Mysore, the Mysore and Minerva Mills were closed six months ago rendering about 10,000 labourers unemployed and homeless. They have not been given even the lay-off charges. It is necessary that the Government should take immediate protective measures to make these mills start immediately and to see that the labourers get their daily wages and lay-off charges as expeditiously as possible.

श्री ह० च० सोय (सिंहभूम) : अध्यक्ष महोदय, मैं इस बिल का समर्थन करता हूं। इस मौके पर मैं आपके द्वारा माननीय मंत्री जी का ध्यान दिलाना चाहता हूं कि पिछले साल रेशम से संबंधित और टसर उद्योग के बारे में एक कमेटी की नियुक्ति हुई थी। उस कमेटी ने काफी विस्तार के साथ टसर के उद्योग के बारे में जांच की और उस कमेटी के द्वारा कई सुझाव दिए गए थे जिसमें एक यह सुझाव यह था कि बिहार और उस इलाके में 50 हजार जो लोग टसर के पालन उद्योग में लगे हुए हैं, उन को न्यूनतम 4 रु० प्रति मन मूल्य कैसे मिल सके। इस पर भी एक योजना तैयार की गई थी। मैं चाहता हूं कि इस मौके पर मन्त्री महोदय हमें यह बतायें कि उस रिपोर्ट के सुझावों पर अब तक कार्यवाही क्या हुई? इस समय मूल्य 2 रु० प्रति मन पर गिर गया, और मैं यह भी सुझाव इस संबंध में देना चाहता हूं कि यह टसर उद्योग में अब तक जो काम राज्य सरकार ने किया है और केन्द्रीय सरकार कर रही है, वह नाकाफी है। मैं चाहूंगा कि टसर के उद्योग को सरकार उचित प्रोत्साहन दे जैसे कि खादी के कपड़ों को प्रोत्साहन दिया जाता है। सरकारी आफिसों में और तमाम लोग जो उस खादी वस्त्र का व्यवहार करते हैं उससे खादी के कपड़ों को और खादी के बुनकर लोगों को, प्रोत्साहन मिलता है। मैं चाहता हूं कि टसर बुनने वाले लोग हैं उनको भी उसी तरह से प्रोत्साहन दिया जाय। मैं देखता हूं कि बिहार में स्कूल के बच्चों को चर्खा चलाने के बारे में जो स्कीम है उसमें उन्हें सूत के कातने का इन्तजाम किया गया है। मैं चाहता हूं कि सूत का उपयोग सिखलाने के बजाय वहां स्थानीय जो मिलता है टसर, उस का सूत निकालने का तरीका क्यों नहीं बच्चों को सिखलाया जाता। बिहार में जो टसर के उद्योग चल रहे हैं उस में और काफी तेजी लानी चाहिए। अध्यक्ष महोदय, मैं यह चाहता हूं कि मिनिस्टर साहब जवाब दें तो हमें यह बतायें कि पिछले समय जो रिपोर्ट हमें दी गई थी टसर के बारे में उसमें अब तक क्या कार्यवाही हुई है? इन बातों को लेकर मैं इस का समर्थन करता हूं।

Shri V. B. Gandhi (Bombay Central South): I am sorry I was not in the House when Shri Sham Lal Saraf spoke. I only heard a part of his speech. He can speak on this subject of sericulture with authority because he comes from a State which is a large producer of raw silk and silk fabrics. My attention was attracted to this item of sericulture by the fact that sericulture is a cottage indusatry; it is an industry which is largely carried on on a small scale and in

cottages and it employs today as many as 3 million people in this country. This industry has been having protection for nearly 32 years now and in a general way one could say that this protection has not done much good to this industry. This industry has not made as much progress as one could expect in a case where protection has been extended for such a long time. This is a very interesting note supplied to us by the Ministry of Commerce in which we are informed that the industry has been making some progress. We agree that it has been making some progress, but I do not know if we could call that a satisfactory rate of progress. For instance, for the last 30 years, the rate of growth in this industry has been hardly 2½ per cent per year. In the last two years, of course, the rate has been accelerated; it is something like 7 per cent, but even then some of us feel that much more could be done. Of course, there is no question of our not approving the decision of the Government that protection as recommened by the Tariff Commission should be continued for another three years. This industry has to be placed on a much sounder footing than it has been able to do even after this long 32 years' protection.

The Tariff Commission, while recommending the extension of protection for a further period, has given certain reasons for its recommendation. I will just briefly refer to two of these reasons. Firstly, the Tariff Commission says:

> "Though the indutry has been enjoying protection for more than 30 years, still it is not in a position to stand competition against foreign producers."

It is not a very encouraging state of affairs. We could certainly do much better.

In another paragraph, it says:

> "Very little education in the methods and techniques of sericulture has been imparted to sericulturists. Sericulture in India is still very much behind the other countries, particularly Japan."

I do not think I need to comment any further on these two paragraphs in which the reasons have been given for extension of protection for a further period.

Finally, I would only say that sericulture certainly does deserve more attention than has been given, as it appears to us, by the Government. Now a great deal more can be done also in the way of acquiring a market abroad for Indian silk fabrics than what has been done so far. As we all know, Indian designs of handloom fabrics have attracted considerable attention and received considerable popularity in foreign markets. If these designs are done in silk fabrics, I am quite sure that they will have the same success as the handloom fabrics have had.

With these remarks, I approve of the decisions of Government to continue protection as recommended by the Tariff Commission.

Shri Narendra Singh Mahida (Anand): The sericulture industry has been enjoying Government protection for the last three decades and yet we have to give further protection to it. This shows that we have not been able to pull up that industry as we should have done.

Indian muslin and Indian silk were famous for the last three thousand years. Even the Chinese traveller Fahiyan had mentioned many centuries ago about the Indian silk and so did the great traveller Marco Polo in his memoirs. But in free India, we have not been able to concentrate on this industry and encourage it. We are not fully attentive to it yet. Japan and China have progressed a lot in silk industry. I have seen silk mills in

[Shri Narendra Singh Mahida]

Lyons in France which have captured the world markets. There is ample opportunity for Government to encourage and develop the sericulture industry here, especially when we need foreign exchange and we have to export our products and compete in the world market.

The high cost of production is also an important factor. We have to grow more mulberry trees. But the sad fact is that we do not have enough plantations. More plantation is needed and more production of silk is required. The States concerned should be given fuller instructions to encourage and protect this industry.

Lastly, I would like to say that the Indian Tariff Act needs revision. It is 32 years old and under that Act many industries need protection. I am also pained to learn that the cotton textile machinery industry has not received protection and support as it should. The hon. Minister may explain the reason why this industry is not receiving protection.

Shri Sonavane (Pandharpur): I rise to support this Bill which extends protection to the sericulture industry and I am happy about it.

But I must say that attempts have not so far seriously been made to improve the quality of the silk and its production. This industry is a cottage industry. As every other cottage industry, therefore, it is cottage industry also which is a foreign exchange earner, deserves careful and sympathetic consideration, and no neglect should be tolerated.

The hon. Minister always goes on boasting that the quality of our goods is good and according to the IMT standards they are perfect. But let me remind him that in the case of some items which have received protection so far, they did not have the requiste quality standards and quality control. Whenever this question of tariff protection has come up in the House, the hon. Minister as usual has always assured us and said that quality control is enforced effectively. But I am really sorry to say that the quality control machinery is not strict in the matter of enforcement. Strict standards are not enforced. There are several complaints about quality of the goods in the piston industry, the ball-bearing industry and several other industries. Unless quality control is enforced, our exports are likely to suffer.

I would, therefore, earnestly request the hon. Minister to see that every item that passes the quality standard test is up to the mark and if any lapse is detected later or if any goods which are exported are rejected on the ground of bad quality, the person who had passed on the particular item should be punished and his promotion should be withheld. Unless this is done, our good-will and our name will suffer. I hope the hon. Minister will take this very seriously and will not rest content with merely giving us assurances here and allowing the enforcement machinery to function in its own way.

Shri Basappa (Tiptur): The hon. Minister has asked me to curtail my remarks because he knows the conditions of the silk industry in Mysore State very well. Therefore, I would not say very much about it except this that it is admitted on all hands that Mysore is one of the major silk-producing States in the country.

Shri Sham Lal Saraf: Why should he not talk of the whole industry? Why should he confine himself to Mysore only?

Shri Basappa: I can talk for the whole industry. But it is true that Mysore produces nearly 80 per cent of the silk in the whole country.

The output has fallen from 185 tonnes to 161 tonnes, and the sales have risen, and the stock position is also lessened, and the prices have gone up from Rs. 114 per k.g. to Rs. 135 per k.g. In these circumstances, it is very

necessary that protection should be given to this industry. So far as the assistance which is given to the various States for the development of the industry is concerned, I welcome the fact that other States also should be helped to develop this industry and assistance should be given to them, but those States which have already advanced and progressed rapidly must be given more assistance immediately to produce more. By all means let the other States be helped, but those States where there is rapid progress should be given greater attention by way of greater assistance.

For the producing of more mulberry silk we want more and more irrigation tanks and for this we need more money. After all, the resources of the Mysore Government are very limited, and I would appeal to the hon. Minister to see that more grants are given for these irrigation tanks. Regarding the concoon market, the hon. Minister knows the position very well. He knows also that the international prices are fluctuating very much. I, therefore, hope that he would see that this industry is not let down. The Silk Board has considered this in all its aspects and has made its recommendation to the Ministry. The matter is now before the Ministry. The Tariff Commission has also pointed this out.

Therefore, I hope the hon. Minister will see to it that this industry progresses very well in the country so that it may take its rightful place in the world market.

Shri Manubhai Shah: I am very grateful to hon. Members for the wide support which they have given to this Bill.

Naturally, the House was more occupied with the sericulture industry because it is one of the industries in which there is a large employment potential, and which is spread over many States. I agree with Shri C. R. Basappa that 80 per cent of the silk really comes from Mysore and in the economic interests of the country that State should receive as much assistance as possible. The Mysore Government and the Mysore Ministers have given us a big plan. It is before the Planning Commission now. I can assure him that with the support of our Ministry, the development of the silk industry in Mysore State and in Kashmir which is the second largest State, and in Bihar and Assam will receive the maximum attention.

I am sorry to tell Shri Sharma that while Punjab has a large number of small-scale industries and also many other types of things, as far as sericulture is concerned, the potential is very limited because of the climatic conditions which are not so favourable either in terms of rainfall or in terms of cool temperature except in some mountainous regions....

Shri Sham Lal Saraf: Kangra district has gone to Himachal.

Shri Manubhai Shah: Then he was pleading for the hill regions which have now passed on to Himachal Pradesh.

I may only give some statistical information even though Shri Sharma did not like them. But they are there internationally accepted. In 1963, the production of mulberry was 1.42 million k.g. and last year it was 1.63 million k.g. In the case of non-mulberry silk, the figures are 0.476 million and 4.518 million; in the case of silk fabrics, it has risen from 26 million square metres to nearly 30 million square meters. I am glad to say that while the progress has not been as good as we would like it to be, it has been substantial and is continuously going up.

It is true, as Shri Saraf said, that we have not been able yet to isolate either the uni-voltine or bi-voltine or other type of silk worms which would really give a tremendous potential.

[Shri Manubhai Shah]

He was Minister there and he knows about this industry. As regards research, at one stage some culture were isolated, but unfortunately it has not caught up and is not producing adequate results. But our work is in that direction, to produce better and better types of seed worms and tusser seeds and various other things connected with this industry.

My hon. friend from Bihar, who is not here, mentioned about the Tusser Report, that Report has been actively considered and many of the recommendations are going to be implemented in the Fourth Five Year Plan.

Regarding the other items mentioned by Shri Sonavane and others, I can assure the House that quality control which now convers more than 82 per cent of India's products is rigidly enforced. As a matter of fact, the complaints that we receive are continuously going down. Last year there was a record minimum of complaints received from foreign buyers. If it means anything to the hon. House, the certificate given by international buyers is already there. That does not mean that complaints here and there are not received. It is the duty of Government and the manufacturers and exporters to see that these are readily attended to and minimised. But sometimes what happens is that foreign buyers interested in trading when prices fall have a tendency to make complaints to depress prices. Therefore, we should distinguish between genuine complaints and those made for the sake of getting the advantage of bargain. I can assure the House that quality control and preshipment inspection are very firm and rigid.

I am glad to see that the cotton textile machinery is being deprotected. It is the maturity that this counfry has achieved in the field of industrialisation that is symbolised by the deprotection.

Shri Sonavane: It has also attained old age.

Shri Manubhai Shah: He is mixing up the textile machinery industry with the cotton textile industry.

Mr. Speaker: Old age requires protection, not deprotection.

Shri D. C. Sharma: As Shri Yashpal Singh said yesterday, there is no old age in the world.

Shri Manubhai Shah: As I said this symbolises that the industry has come of age. This industry now takes a prominent role and now we are in a position to man and to equip our textile mills by about 75 per cent indigenous capacity and only 20—25 per cent import. With these words, I commend the motion.

Shri Sivamurthi Swamy: What is his reaction to the separation of handloom from the Textile Commissioners field?

Shri Manubhai Shah: That is not relevant to this discussion. Handloom is not being considered now and the distribution is not being done by the Textile Commissioner. It is considered to be freely purchased and sold in the country.

Mr. Speaker: The question is:

"That the Bill further to amend the Indian Tariff Act, 1934, be taken into consideration".

The motion was adopted.

Mr. Speaker: The queston is:

"That clauses 1 and 2, the Enacting Formula and the Title stand part of the Bill".

The motion was adopted.

Clauses 1 and 2, the Enacting Formula and the Title were added to the Bill.

Shri Manubhai Shah: I move:

"That the Bill be passed".

Mr. Speaker: Motion moved:

"That the Bill be passed".

Shri Sham Lal Saraf: I spoke very briefly and could not touch on one point. Today the industry suffers from want of adequate and highly trained technical personnel. We have not got proper trained personnel in the higher reaches. There should be no effort spared to send bright men to foreign countries for training in this industry so that it may develop in the proper way.

Shri Manubhai Shah: I accept that point.

Mr. Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

12.56 hrs.

STATUTORY RESOLUTION UNDER INDIAN TARIFF ACT

The Minister of Commerce (Shri Manubhai Shah): I beg to move the following Resolution:

"In pursuance of sub-section (2) of section 4A of the Indian Tariff Act, 1934 (32 of 1934), this House approves of the Notification of the Government of India in the Ministry of Commerce No. S.O. 3460, dated the 11th November, 1966, increasing the export duty leviable on tea".

Mr. Speaker: Resolution moved:

"In pursuance of sub-section (2) of section 4A of the Indian Tariff Act, 1934 (32 of 1934), this House approves of the Notification of the Government of India in the Ministry of Commerce No. S.O. 3460, dated the 11th November, 1966, increasing the export duty leviable on tea".

Shri Narendra Singh Mahida (Anand): On a previous occasion, the question of tea had come in for discussion. I had drawn the attention of the Minister to the fact that Ceylon is scoring over us and their tea is sold more than our tea in foreign countries. Will the Minister assure us that by increasing the export duty, we will be improving our quality also and that we shall be competing in the world market along with Ceylon and other countries in a more effective way? I understand tea was our monopoly for a number of years. We have to take very earnest measures to see that our tea is consumed more in America, Europe and other places.

The other day a Ceylonese Parliamentary delegation was here. We have congratulated them, on their salesmanship on tea that in spite of their tiny size as compared to India, they were doing a greater trade in tea; in that larger spirit, we had congratulated them.

We should also be careful that Asian countries like Ceylon and India should stand together and not compete among themselves when propaganda is conducted in foreign markets. I would request the hon. Minister to evolve some sort of Asian market, where all the countries of Asia producing tea, could get together against the world market and avoid inter-seat competition.

With these comments, I support the Resolution.

Shrimati Savitri Nigam (Banda): I would not take much time. But I would like to make one or two points. We have noted with great concern that there has been a decline in our export earning on tea. The reasons are very obvious. The most important reason is that even now many countries import our tea, reblend it, repack it and sell it again to third countries. Thus they capture our potential market in an artificial manner. Therefore, if we develop and refine our packing industry and stop the export of unblended tea, those countries which are used to Indian tea but are getting it from other sources would turn to us and

[Shrimati Savitri Nigam]

would start liking our blendings and flavours.

The second point concerns packing. Many of our products which can otherwise capture any markets because of our quality are not doing so due to our defective packing. The packing industry is not sufficiently developed here. No emphasis seems to have been taken on this either by the Commerce Ministry or the Industry Ministry or other export bodies which have been doing wonderful work otherwise.

I would suggest that we should concentrate on these two aspects. Then I am sure our export earnings on Indian tea would increase, and many more new markets will be available.

The third point is that we are not doing the market surveys. Our organisation which should be active in search of more and more markets is slow and ineffective. If all these points are considered and steps taken, I am sure our export earnings would increased.

13 hrs.

Shri Sonavane (Pandharpur): Sir, I would not have spoken if the hon. Minister while moving his motion had given some reason for this motion. What are the reasons that prompted him to increase the export duty. In view particularly of what the hon. lady Member has said, that is, the falling foreign exchange, would not this increase affect our foreign exchange? What steps have been taken in order not to hamper our export and foreign exchange.

Another thing is that competition is faced by us from various other countries. Our propaganda machinery abroad should work to expand the consumption of tea and it has to be geared up. There should not be any slackening in the effort. We would like explanation on these points.

श्री तुलशी दास जाधव (नादेड़) : चाय के ऊपर एक्सपोर्ट ड्यूटी आप बिठाने जा रहे हैं । इसके आपको कितनी आमदनी होगी इसका पता मंत्री महोदय को होगा लेकिन मैं कहना चाहता हूं कि कहीं इसका परिणाम यह न हो कि एक्सपोर्ट ड्यूटी अधिक होने से हमारी चाय का विदेशी बाजारों में भाव ज्यादा हो जाये और वहां इसकी बिक्री कम हो जाए और हमें जो फारेन एक्सचेंज चाहिए और जिसकी हमें बहुत ज्यादा जरूरत है, वह हमें ना मिल सके । इस वास्ते यह जो चीज है इसकी तरफ आपका ध्यान जाना चाहिए ।

दूसरी बात यह है कि अगर चाय का निर्यात कम हो जाएगा तो इसका परिणाम यह हो सकता है कि देश में इसकी खपत ज्यादा हो जाए । इसका परिणाम यह होगा कि लोग ज्यादा चाय पीना शुरू कर देंगे और आपको जो फारेन एक्सचेंज चाहिए उससे हाथ धोना पड़ेगा । मैं समझता हूं कि यहां इसकी खपत कम करके अगर चाय का निर्यात किया जा सके तो ज्यादा अच्छा होगा । लोगों को यहां चाय पीने को न मिले तो भी कोई हरज की बात नहीं है । हमें चाहिए कि हम अधिक से अधिक चाय का निर्यात करें और इसके लिए जो भी आवश्यक कदम हैं वे उठायें ।

Shri D. D. Puri (Kaithal): Sir, I shall make a very brief observation and want to make only one suggestion in regard to marketing of tea abroad, particularly in London. The Ceylon Tea Centre right in the heart of the town is rather on a scale far superior to anything that we have. I would draw the attention of the hon. Minister to the proposal that was moote sometime back to have a proper marketing centre in Rome and in other centres of Europe in order to develop consumption of tea in those places.

Shri Sonavane: The tea centre at London is quite efficient; we saw it.

Shri Manubhai Shah: Sir, the reason why I did not take the time of the House was that this Bill is a routine Bill and on so many occasions we had discussed it. It is the privilege of the House that when some duty is raised, I have to come here. It happens that the reduction in duty on eighty per cent of our tea has not been mentioned in the Resolution because it is not required under the statute. When devaluation took place, Government announced a flat export duty at a specific rate of Rs. 2 per k.g. Representations were received from the tea merchants and tea exporters that such a specific duty was harming the interest of the cheaper quality which formed about 70 or 75 per cent of our exports. Therefore, we had to have the value slab system specific-*cum*-*ad*-valorem by which 70 or 75 per cent of tea exports will have to pay just eighty paise per k.g. instead of Rs. 2 or Rs. 1.10 per k.g. This is not an increase in export duty which makes our tea more expensive but it is in a way reduction of the export duties so that cheaper teas can be exported. The rise comes only in respect of those teas like the Darjeeling tea sold at Rs. 12 per k.g. or Rs. 20 or even Rs. 110 per k.g. and Rs. 2 which will be raised to Rs. 3 now will be such an insignificant part of the value that it will not affect the exports at all. It will help us to earn foreign exchange from all angles. The value slab system is better than the previous specific system. True, there have been complaints from exporters and tea planters about the new system; the new system has got to be properly geared up to give results. Our officers are taking care to see these things, and want to ensure that no consignments are held up in Calcutta because of the introduction of the value slab system.

The hon. Member here and that hon. Member there . . .

Shri Sonavane: The hon. Minister should say—the hon. Member from Pandharpur or from Bhandara. He says the hon. Member here and there—that is not good language.

Shri Manubhai Shah: All right, the hon. Member Mr. Sonavane. The other hon. members did not object.

Mr. Speaker: Shri Sonavane is on the panel of Chairmen.

Shri Manubhai Shah: Hon. Member Sonavane mentioned about the tea centre and he said that we should see that we are not outstripped by competition. I can say that the best of relations exists between India and Ceylon and the ministers of the two countries meet continuously. Only last week the two ministers of the Ceylon Government were to come, but they could not because they had some other important parliamentary engagement; they are likely to come next month. We also had a conference on tea export in Ceylon last year. The friendliest relations exist between the two countries. We come from the same development region of the world; we can ill-afford to be at cross purposes.

The London Tea Centre is being continuously improved and we will try for extended premises there. In Rome also, our ambassador, His Highness the Maharaja of Patiala has sent proposals to open a new tea centre, and that is under active consideration.

Shri D. C. Sharma (Gurdaspur): At Patiala?

Shri Manubhai Shah: In Rome. The real bottleneck of export is the level of consumption here and production. The consumption of tea in India has risen from 28 million about 10 years back to 190 million kg now. We go on drinking more tea and the surplus left for export is getting reduced. That is the basic factor. The steps we take should aim at increasing production and restraining consumption so that exports could increase. With these words, I commend the Resolution.

Mr. Speaker: The question is:

"In pursuance of sub-section (2) of section 4A of the Indian Tariff

[Mr. Speaker]

Act, 1934 (32 of 1934), this House approved of the Notification of the Government of India in the Ministry of Commerce No. S.O. 3460, dated the 11th November, 1966, increasing the export duty leviable on tea."

The motion was adopted.

13.10 hrs.

CONSTITUTION (TWENTY-THIRD AMENDMENT) BILL

Mr. Speaker: Shri Chavan.

Shri S. M. Banerjee (Kanpur): On a point of order.

Mr. Speaker: Let him move the motion, first.

The Minister of Law (Shri G. S. Pathak): Sir, on behalf of Shri Y. B. Chavan I beg to move:

"That the Bill further to amend the Constitution of India, be taken into consideration."

The Minister of Parliamentary Affairs and Communications (Shri Satya Narayan Sinha): No time has been allotted to this Bill; this matter did not come up before the BAC. I therefore request you to take the sense of the House how much time the House would like to have for this Bill, because there is a special voting for this, and the approximate time may be fixed so that hon. Members must be informed to be present here in the House.

Shri S. M. Banerjee: Sir, in this connection, may I remind you that this is a most controversial Bill; the purpose for which this question has been asked is, because they are short of men.

Mr. Speaker: Whether they are short of men or not is not the concern now. The question before the House is, how much time should be given.

Shri S. M. Banerjee: Three hours.

Mr. Speaker: If he is satisfied if I give three hours, all right.

Shri S. M. Banerjee: Yes, Sir.

Shri Satya Narayan Sinha: We agree; we shall keep up to that.

Mr. Speaker: Shri Banerjee has proposed it and I have accepted it.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jaganatha Rao): The voting will be at 4 O'clock.

Mr. Speaker: Yes; the first voting. It is only the approximate time.

Shri G. S. Pathak: Mr. Speaker, Sir, this Bill has become necessary because of certain constitutional defects discovered in the appointments of district judges and in the orders of transfers relating to district judges, and the Supreme Court has in two decisions laid down the law which would apply not only to those district judges who were concerned with those cases but also with other district judges because the Supreme Court has given a declaration of law which would apply to all cases.

This Bill does not effect any change in the substantive provisions of any article of the Constitution. It merely seeks to validate the past appointments of the judges and the judgments and orders of transfer, and it really implements the two decisions of the Supreme Court. Those who were found not eligible for appointment by the Supreme Court under the Constitution are excluded. Their appointments are excluded from this Bill; only their judgments are sought to be validated.

Before I proceed further, may I invite the attention of the hon. Members of this House to the relevant articles of the Constitution which created the difficulty and which were the subject-matter of the Supreme

Court decision? Article 233(1) reads as follows:

> "Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

Now, the question arose whether selection by a committee in which there were to judges and the judicial secretary would be a consultation within the meaning of article 233(1) even though the High court may have sent the list prepared by the selection committee to the Governor. That was one question. The other question was whether the word "posting" would cover the case of transfer. The controversy was that "posting" meant the first posting after the appointment; that it does not mean any order of transfer which may take place after the first posting. That was the second controversy.

Clause (2) of article 233 reads as follows:

> "A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Therefore, for direct recruitment from the Bar, the recommendation by the high court was essential. If the hon. Members will kindly refer to article 236, they will find that the expression "district judge" is of a very wide import and it includes several kinds of judges. Article 236 reads thus:

> "In this Chapter—
>
> (a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;"

Article 235 would also be necessary; the control over district courts and courts subordinate thereto including the posting and promotion of, and grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the high court. Therefore, if the word "control" includes transfer, then transfer could be made only by the High Court. If the word "posting" in article 233 did not include transfer, than the Governor could not pass an order of transfer. It can only be the High court which could pass an order of transfer, because the power of control over district courts belongs to the high court. That was the second controversy.

In April, 1953, the Government made rules purporting to act under article 309 for the appointment of district judges in both the cases, viz., where promotions had to be made from the subordinate judicial service and where there was going to be direct recruitment from the Bar. Under these rules, a selection committee was appointed consisting of two high court judges and the judicial secretary of the Government. That selection committee had to make a selection not only for promotion from the subordinate judicial service to the post of district judges but also for direct recruitment from the Bar. The selection committee had to place the list of candidates selected before the High court, and the High court had to transmit the list to the Governor who had to make the appointment. This was the procedure.

One Chandra Mohan, an officer belonging to the judicial service, filed a writ petition in the high court challanging the validity of these rules, and his case was that the consulation with the selection committee did not amount to consultation with the High court;

[Shri G. S. Pathak]

that it should be the entire high court which should have consultation with the Governor. That was the point raised. The High court upheld the validity of the rules presumably on the ground that ultimately it was the high court which sent the list and that involved approval. But Chandra Mohan took the matter to the Supreme Court in appeal. The Supreme Court said that the selection committee is not a substitute for the High court and therefore these rules are invalid both under article 233(1) and article 233(2).

Shri Tyagi (Dehra Dun): Were the two judges of the committee nominated by the High court's Chief Justice or by the Government themselves?

Shri G. S. Pathak: It must have been done with the consent of the High court; they must have been nominated by the High court. I find from the judgement of the Supreme Court that even approval is mentioned while transmitting; yet the Supreme Court holds that this is not consultation with the High court. Therefore, these rules are void and consequently all appointments made under these rules are void. That is what the Supreme Court said.

May I, with your leave, read just a few lines from the Supreme Court's judgement which will emphasis the point that I am making?

> "For the foregoing reasons, we hold that the rules framed by the Governor empowering from the recruit District Judges from the judicial officers are unconstitutional and for that reason also the appointment of respondents so and so was bad."

The operative part of the judgment says:

> "In the result, we hold that the UP Higher Judicial Service Rules providing for the recruitment of District Judges are constitutionally void and therefore the appointments made thereunder were illegal."

This is not a decision which operates only between the parties or which governs only the persons whose appointment was challenged in this case. This is a declaration of law made by the Supreme Court which will apply to all cases where consultation in the sense defined by the Supreme Court was not had.

I shall read a few more lines from this judgment because there is some misapprehension about what the Supreme Court laid down and which made this Bill, to use the language of Mr. Banerjee, controversial:

> "We would, therefore, hold that if the rules empowered the Governor to appoint a person as District Judge in consultation with a person or authority other than the High Court, the said appointment will not be in accordance with the provisions of article 233(1) of the Constitution.
>
> While constitutional provisions say that the Governor can appoint District Judges from the service in consultation with the High Court, these rules say that the Governor can appoint in consultation with the Selection Committee, subject to a kind of veto by the High Court, which may be accepted or ignored by the Governor...
>
> The position in the case of District Judges recruited directly from the Bar is worse. Under article 233(2) of the constitution, the Governor can only appoint advocates recommended by the High Court to the said service"—i.e. not recommended by the Selection Committee.

The result is that all the appointments which were made without consultation with the High Court, whether

from the Bar or from the judicial service, are unconstitutional. Further, all judgments given by them would be a nullity and would have no legal effect.

After this, a question arose in the Allahabad High Court whether the judgments given prior to the date when the Supreme Court made the law clear were not binding upon the citizens. The full bench sat to decide this and there was a conflict of view. One judge said that even though the judgments were pronounced before the declaration of law by the Supreme Court, i.e. prior to 8-8-66, the judgments would be a nullity.

Shri S. M. Banerjee: Which was the case? Jaikumar case?

Shri G. S. Pathak: Yes, that is the only full bench case. But the majority of the judges said that during the time when a judge functions under colour of office and he is a *de facto* judge and the defect in appointment is not exposed—to use the language of the judges—the judgments would bind the citizens. This had to be considered along with a decision of the Supreme Court which said that...

Shri S. M. Banerjee: What was that case?

Shri G. S. Pathak: It was J. P. Mitter's case. The dispute in that case was what would happen to the actions of a judge who has exceeded the age of superannuation. This was in 1965. The Supreme Court held as follows:

> "If the decision of the President goes against the date of birth given by the appellant, a serious situation may arise, because the cases which the said judge might have determined in the meanwhile would have to be reheard, for the disability imposed by the Constitution when it provides that a judge cannot act as a judge after he attains the age of superannuation will introduce a constitutional invalidity in the decisions of the judge."

Leave for appeal to the Supreme Court has been granted in that full bench case and the matter will be coming up before the Supreme Court. Either the appeal has been filed or is going to be filed.

I wish hon. members to bear in mind the date 8-8-66. Prior to that date, the question would arise whether the majority view taken in the full bench case is correct or not. If that majority view is upheld by the Supreme Court, the judgments prior to 8-8-66 might remain valid. But after 8-8-66, when the defect was exposed and when everyone knew that there was no consultation with the High Court as required by the Constitution, their judgments would not be valid. There should not be any dispute about it.

Shri Tyagi: Why were they allowed to sit after that date?

Shri G. S. Pathak: Because the courts will have to function with the aid of the judges. The courts could not remain empty as there would be numerous cases to be decided. So far as the latter part is concerned, it is necessary to validate the appointments whenever made since 1954, because if the appointments are invalid, they could not pronounce judgments even after 8-8-66 and five of these judges are in the High Court today. They were appointed there because their appointments as District Judges were valid. This is the position.

In order to remedy these defects, it became necessary to validate only the appointments and judgments. It is not as if this Bill wants to introduce any change in the law saying that such appointments should be made in future also. New rules will have to be made for the new appointments. By this Bill, I am merely having the validation of the appointments made prior to the 8th August, 1966, and also validation of judgments and all acts done by these judges; nothing further. I also want that the transfers should also be validated, because instead of

[Shri G. S. Pathak]

the High Court the Governor made transfers. That was another decision of the Supreme Court in which the Supreme Court held that the word 'control' includes 'transfer', the word 'posting' does not include 'transfer'. This is the position.

Now, so far as the factual position is concerned, I may be permitted to mention it before the House.

Shri Nath Pai (Rajapur): How many judges are affected.

Mr. Speaker: The hon. Member wants to know how many judges are affected.

Shri Nath Pai: He is putting an appearance as if the entire judiciary has collapsed.

Shri G. S. Pathak: It is precisely for this purpose that I am stating what is the actual position prevailing.

Shri Nambiar (Tiruchirapalli): How can such a glaring mistake creep in?

Shri G. S. Pathak: The glaring mistake was committed not only by the Government but also by the High Court. Both of them were working together and they were working in the belief that when the Selection Committee prepares the list and makes the selection, the High Court should be deemed to have approved the slection and therefore there was in consultation with the High Court. That is how this mistake has been continuing since 1954. No one raised the question in any court.

Shri Nath Pai: This is in your own State, not everywhere.

Shri G. S. Pathak: There are several States. In Rajasthan a Selection Committee was appointed consisting of the Chief Justice, the Administration Judge and another nominee of the Chief Justice. A writ was filed in the Rajasthan High Court. There also the matter is under dispute. The matter now is in the Supreme Court and, if my information is right, the case has not been taken up. I have been informed that it is probably because this amendment is pending here. Now, all the State Governments were written to, after this decision of the Supreme Court, and we found that there are two appointments which might also be defeated, in Mysore—the Chief Justice's own appointment and one more. That is my information. So far as the question of transfer is concerned, almost every State has asked for the amendment of the Constitution so that the orders of transfers might be validated. That is the position.

Shri Nambiar: The entire jails will have to be thrown open.

Shri G. S. Pathak: Yes, yes; if there is no validation. That is why we have brought in this validation Bill.

Mr. Speaker: There are those that have been sentenced to death and hanged.

Shri G. S. Pathak: I may inform the hon. Members that numerous petitions by way of writ have been filed in the High Court and in one petition bail application has been allowed in a capital sentence case because the death sentence will be invalid by reason of defective appointment. Numerous cases are pending there.

An hon Member: Who is responsible?

Shri G. S. Pathak: Whoever may be responsible, the people should not suffer because, if this mistake continues since 1954 and both the High Court and the Governor had been acting under a misapprehension about the validity of their laws then, in that case, you cannot say that this was something deliberate or done for any ulterior purpose.

Sir, you wanted some information

from me. I have taken information from the U.P. Government. There are 38 promotees selected by the Selection Committee in the years 1954-57 and 11 by direct recruitment in those years. Then there are 29 promotees on recommendation of the Administrative Committee of the Judges. Please remember that the Administrative Committee of the Judges to which this work of consultation might have been entrusted would be as legally bad as any other Selection Committee, because according to the decision of the Supreme Court there must be selection by the High Court. As I said, there are 29 promotees on recomendation of the Administrative Committee in 1961 and 1963. There are 116 promotees on recommendation of or in consultation with the Administration Judge alone. Then there is another group of cases where about 100—I cannot give you the exact figure—judges were not appointed in the usual way by the Selection Committee but powers of Sessions Judge were conferred upon these judges under the Criminal Producedure Code and then on the recommendation of the Administration Judge they were treated as District Judges—'treated' in the sense that though constitutionally they would not be District Judges everyone considered them to be District Judges because they acquired the powers of Sessions Judges on the recommendation made by an Administration Judge.

It is not a question of numbers. Even if ten judges were involved, they must have delivered numerous judgments since 1954 and 1957. It is not a question of appointment of one judge, two judges or a hundred judges. The judgments would be not only in civil cases where decretal monies must have been paid, properties must have changed hands, rights must have been determined and all those judgments will be set aside and titles unsettled and in criminal cases where people have suffered punishment and sentences have been executed....

Shri Nath Pai: You are trying to impress the House by creating the bogey of invaliation of judgements...

Shri G. S. Pathak: I will tell you about the consequences and then sit down. Please consider the consequences if you do not validate the past appointments and past judgments and orders of tranfer. All cases will be re-heard. Certainly, judgments after 8th August, 1966 will have to be vacated. Prior to that the judgments will have to be vacated if the Supreme Court accepts the earlier decision in J. P. Mitter's case or the dissenting judgment in the Full Bench case of Allahabad. These writ petitions are hanging over the heads of these judges like Damocle's sword. They do not know what would happen to them. The number of cases to be re-heard would be numerous, properties would have changed hands and so on and so forth, as I have already stated. There may be numerous cases of damages against the Government itself on the ground that it was the Government's agent, who was not a District Judge and who could not be protected as a District Judge, who was responsible for all these changes in the titles, imprisonment etc. etc.

So far as the Judges are concerned, without the removal of this uncertainty it is not possible that the judiciary in that State can function properly. That is the position. It is very easy to say that the High Court was wrong or that the Governor was wrong and so on and so forth, but look at the inconvenience and hardship which the people will suffer; look at the very fact that so many cases which were decided since 1954, will have to be decided again. This is the position.

Shri D. C. Sharma (Gurdaspur): Have you ever been a Judge of the Supreme Court?

Shri G. S. Pathak: I submit that this Bill should be aproved by the House unanimously.

Mr. Speaker: Motion moved.

"That the Bill further to amend the Constitution of India, be taken into consideration."

Shri S. M. Banerjee: On a point of order, Sir. I tabled a motion under

(Shri S. M. Banerjee)

rule 184 that the Attorney General should be summonded and should be asked to address this House under article 88 of the Constitution.

Mr. Speaker: I have got his motion all right and I will put it before the House.

Shri S. M. Banerjee: I have a point of order on how it could be rejected.

Mr. Speaker: I am allowing it. I have not rejected it.

Shri S. M. Banerjee: It was not circulated.

Mr. Speaker: I have got it and I am allowing it.

Shri S. M. Banerjee: Are you allowing the first motion or the second motion?

Mr. Speaker: I am allowing the first one. The second was barred, but the second one also I will allow. I will waive the delay. Now, has he a point of order?

Shri Nambiar: The point of order was about the admission. Now that it has been admitted, there is no point of order.

Mr. Speaker: There is a motion by Shri Yashpal Singh saying that the debate on the Constitution (Twenty-third Amendment) Bill, 1966, be adjourned. Is he moving it?

Shri Yashpal Singh (Kairana): I am moving No. 4 which says that the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967.

Mr. Speaker: That will come afterwards. So, No. 5, he is not moving.

Shri Yashpal Singh: No.

Mr. Speaker: Then comes Shri Banerjee's motion that the House resolves that the Attorney General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966, and Government should take necessary steps in regard thereto. Is he moving it?

Shri S. M. Banerjee: I am moving it.

Mr. Speaker: Then, there is one motion by Shri Yashpal Singh saying that the Bill be refered to the Supreme Court for its opinion. Is he moving it?

Shri Yashpal Singh: I am not moving that.

Mr. Speaker: Then there is another motion by Shri Banerjee saying that the Bill be referred to the President for obtaining the opinion of the Supreme Court. Is he moving it?

Shri S. M. Banerjee: Yes, Sir; I am moving it.

Mr. Speaker: Then, Again Shri Yashpal Singh's motion that the Bill be circulated for eliciting opinion thereon.

Shri Yashpal Singh: I am moving it.

Mr. Speaker: All these will be treated as moved.

Shri S. M. Banerjee: I beg to move:

(i) "This House resolves that the Attorney-General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966 and Government should take necessary steps in regard thereto." (6)

(ii) "This House resolves that the Constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court under article 143 of the constitution on the following question of law:— Whether the judgements and orders passed by the District Judges appointed by the U.P. Government where

appointments have been declared *ultra vires* by the Supreme Court in a recent writ petition are valid or not." (7)

Shri Yashpal Singh: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967." (4)

Mr. Speaker: All these motions are before the House. We will have a discussion on them; I will hear the Members and then I will put them to the vote of the House. Shri Nath Pai.

Shri Nath Pai: Mr. Speaker, I was a little distressed to listen to the presentation of his case by the Law Minister.

Shrimati Renu Chakravartty (Barrackpore): It is an understatement.

Shri Nath Pai: Yes. I was deeply distressed, I should say, because in the first place he has not missed a single opportunity to mis-state the law of the land. I am sorry that in his eagerness to persuade the House to accept the Constitution (Amendment) Bill about which I doubt if he himself is fully convinced, he has tried to raise the bogies of all kinds of dangerous consequences that may follow. He has tried to refer to the hardships of the people that may result if this amendment is not rushed through. I am afraid, the people's lot under his party's rule has been of hardships; so his shedding these tears about the so-called hardships were rather crocodile tears.

Shri D. C. Sharma: No, no.

Shri Nath Pai: I should like to point out to you, Mr. Speaker, first the statement of objects and reasons where he states:—

"As a result of these judgement, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity. The functioning of the district courts in Uttar Pradesh has practically come to a standstill."

I beg to submit that both these statements are far from being accurate. I am afraid, he should not take my statement remiss if I say that both these statements are not only exaggerations but both the statements are untrue. Seldom has the statement of objects and reasons been couched in such loose terms which is so far removed from the reality that prevails in UP.

First of all I would take the statement that the functioning of the district courts in Uttar Pradesh has practically come to a standstill. Is that really so?

13.47 hrs.

[SHRI SHAM LAL SARAF *in the Chair*]

According to the facts which he later on supplied to this House, the figures which he gave to us, it is only a certain number of appointments which have been invalidated. It is not the entire district judiciary of UP that has been paralysed as he sought to make out. It is only a certain number and, if I am right, it is only 11 judges, out of which four were direct parties to these cases, who have been directly affected.

I think, the law of the land also he has mis-stated. I should here like to say that when he said that the judgements,, decrees, orders and sentences passed by these judges, whose appointments have been held irregular, are also invalid, I was deeply embarrassed to hear an eminent lawyer like him and the Law Minister of India making such a wide and sweeping statement.

What is the law with regard to a judgement passed by a judge whose

[Shri Nath Pai]

appointment subsequently comes to be invalid? Is the law as he stated or is the law something different? He has quoted Justice Mitter's case. I think, he knows the case of justice Ramachandra Iyer. Justice Ramachandra Iyer continued to be in the High Court of Madras on the false pretense that he had not reached the retiring age. He continued to deliver judgments, hear case and pass orders in the court. When his younger brother had completed and celebrated his *sasthiabdapoorthy*, the elder brother was still 58 years of age. This matter was brought to the notice of this House and the necessary proceedings were taken Later no, Justice Ramachandra Iyer had to retire.

I do not go into this sad episode. It was a lamentable lapse on the part of a man who was not qualified but who continued to cling to office. This is a malady which is not only limited to High Courts. We see its blatant example on the Treasury Benches every day. But you know, Mr. Chairman, and the Law Minister ought to know that the judgements passed by him were not invalidated. In a collateral proceedings judgements cannot be invalidated. It is only when a *quo warranto* has been taken the judgement can be vitiated, not subsequently if the Judge has acted *defacto*. I think, I am quoting the law here correctly. It is the majority judgement in the Allahabad High Court that accept where the judges are directly parties as to their appoitment or as to their character when the judgements can be vitiated, in collateral proceedings where the appointment is not question.....

Shri G. S. Pathak: That is only one proposition. There was another proposition laid down by the High Court which you will kindly read.

Shri Nath Pai: I will. I say the law of this country is very sound. It bases itself on the law and practice in the United Kingdom. The practice in the United States of America and Canada, where we follow the basis of the common law, is identical that the judge's appointment may be subsequently found to be invalid, unconstitutional or illegal, but you cannot invalidate—how can you?—the criminal proceedings in which a death sentence was passed against a criminal offender. But is it possible, therefore, to restore the man to life? No. This judgement, whatever the validation or invalidation of the particular appointment, stands. That is the law. I do not think that he should have stated that every judgment has been vitiated. It is not so; it remains valid. That is a very clear law.

He quoted the majority judgment in the Allahabad High Court; he tried to fight in the House to get his amendment accepted by saying that one judge has dissented and he has cast some doubts with regards to the validity of the judgements, orders and writ petitions heard by these judges. I want to take a very serious point after telling him that it is far from being fair to the House, it is almost irresponsible to state.....

Shri G. S. Pathak: If you will allow me, I would like to say this. I have very clearly stated that, after the 8th August, when the Supreme Court delivered the judgment, the position will be very different because the law was made clear that the defect in the appointment was exposed. The controversial area is only prior to 8th August when it was not known whether the appointments were valid or not and the full Bench was concered with appointments prior to 8th August, prior to the exposure of the defect

Shri Nath Pai: The general proposition which I tried to make has been upheld in this case. I could not get an easy reference from the library. It is so difficult to get quick references when you need from time to time, and when you have to confront an eminent lawyer like the Law Minister. The principle underlying them

has been applied to certain cases. I think I wanted this case of Pullan Behari. Kink Emperor, 15 Calcutta Law Journal full bench judgment, in which a similar question had come and it is well established. I would like you to help me to get that reference and I would read you the relevant chapter about it.

Mr. Chairman, why do all these things happen? I would like to draw his attention because this a deeper malady. You say that appointments have been made wrongly. It is a constant practice in U.P. and in some States, I know, unfortunately, to tamper with the independence of the judiciary by tampering with the appointments. Mr. Chairman, I am quite sure you have seen what the Law Commission had to say about this. The malady begins with the tampering of appointments. This is not accidental. The present executive has made it a practice, has made a virtue of it. This has been a thorn in the flesh of independent judiciary. They have tried to control it by having hand-picked men to fill the vacancies. I would like to say this. At the opening of the Supreme Court, Chief Justice Kania had this to say about this pernicious practice. It is this practice that a Selection Board was created in U.P. consisting of the Judicial Secretary and two judges. He could not give a categorical reply whether the High Court Chief Justice was consulted. He said, 'yes', but it was such a mild 'yes', an unconvincing 'yes'. That made it very clear..... (*Interruptions*). It can be mild and also true.

You can say that he was embarrassed by the question of Mr. Tyagi who asked whether the Chief Justice had been consulted with regard to the choice of the two judges who were to be the members of the Selection Board. What do we find, Sir? This is how this pernicious practice continues.

I am now quoting:

> "In order that the Supreme Court may have the full assistance in its work, the High Courts will have to be strong in their personnel. For some years before 947, there was a policy to appoint members of different communities, in some pproportion in the services, including the High Courts. In theory, it appears to be now accepted that appointments will be only on merits. The policy, however, does not appear to have been completely abandoned. We hope that political considerations will not influence the appointments to High Courts."

I want to remain him against of this malady. In the Law Commission they have pointed out this. I am reading from the Law Commission's Report, from page 69. What is this glaring indictment against the practice of the executive, about the appointments of hand-picked men, ineligible men, submen? (*Interruptions*).

Shri G. S. Pathak: Is it the first Report?

Shri Nath Pai: This is "Reform of Judicial Administration, Vol. 1, Chapters 1-29, page 69.

Shri G. S. Pathak: I was probably a party to it.

Shri Nath Pai: I would read here:

> "The almost universal chorus of comment is that the selections are unsatisfactory and that they have been induced by executive influence. It has been said that these selections appear to have proceeded on no recognizable principle and seem to have been made out of considerations of political expediency or regional or communal sentiments."

Finally I will say this. This was what the former Chief Justice of India had said:

> "The Chief Minister now has a hand, direct or indirect, in the

[Shri Nath Pai]

matter of the appointment to the High Court Bench. The inevitable result has been that the High Court appointments are not always made on merit but on extraneous considerations of community, caste, political affiliations, and likes and dislikes have a free play. This necessarily encourages canvassing which, I am sorry to say, has become the order of the day."

This is the underlying malady with which we are confronted. Now he wants to get an amendment passed. To regularize what? To regularize the failure of the Government in upholding the provisions of the Constitution. He has been trying to take an umbrage under the fact that two judges were associated and, therefore, he made a statement that the High Court has been remmiss. Is that the thing? No. This kind of fictitious committees are created, so that right from the lowest rung of the judiciary to the highest level possible, they can have judges who will not be looking to the law of the land, who will not be looking to the previsions of the Constitution but will be passing judgements which come in handy for those who are in power.

I would normally have restrained myself from participating in any debate in this session but one could not sit idle when one sees what he is asking for. He is asking for an amendment of the Constitution. For what purpose? The Constitution is not to be easily tampered with. The Constitution is not sought to be amended to regularize the irregularities and illegalities committed by the executive. It is only when the need is so imperative, over-powering, and convincing, with regard to social objectives where the law of the land is lagging behind—imperative social changes—that the Constitution has to be amended. They are making a mockery of this provision of amending the Constitution—Article 368—just by coming whenever they are in the wrong. Now like a clever judge he tries to say a very nice sentence, which he said and which is likely to recommend itself to a member who is not alert or who is not on his guard. It is this:

> "It is with a view to implementing the judgment of the Supreme Court that I want to introduce this amendment."

Mr. Chairman, you know that such an appeal is likely to find itself to be acceptable to you, to me and to anybody, if we do not go behind.

I was wanting to conclude in this matter about the whole procedure of appointments. I have cited the practice in the Supreme Court and the High Court. I now conclude with this chapter of it by quoting:

> "If the State Ministry (Minister in the State Government) continues to have a powerful voice in the matter, in my opinion, in ten years' time...."

This is a High Court judge giving evidence before the Law Commission.

> "...in my opinion, in ten years' time, or so, when the last of the judges appointed under the old system will have disappeared, the independence of the judiciary will have disappeared and the High Courts will be filled with judges who owe their appointments to politicians."

Here is a warning. This warning has come to us today. What happened in U.P.? Now we have the Law Minister of India coming and asking us to regularize these practices. I want to warn this House—I will have an opportunity, I think, when he comes to the Third Reading of this Amendment Bill, to speak—that this House should not be a party to this kind of an almost flippant amendment

of the Constitution. In the first place, there are only a few judges who are affected by this and they can be alternatively provided. This bogey of a large number of judgements and orders passed being invlidated is not tenable if we look to the current practice. He has no reply to the cases decided by Justice Ramachandra Iyer.

14 hrs.

Shri G. S. Pathak: May I just interrupt for a minute?.....

Shri Nath Pai: Yes.

Shri G. S. Pathak: I am very grateful to the hon. Member for allowing me to interrupt

Shri Nath Pai: I hope he will teach his colleagues also to practice this gallantry when a Member wants to make a point.

Mr. Chairman: Is the hon. Minister clarifying some issue?

Shri G. S. Pathak: I just want to mention one fact. Probably, it is not within the hon. Member's knowledge. The case of Shri Ramachandran never came before the Supreme Court, and the Supreme Court never decided anything about it.

Shri Nath Pai: The hon. Minister is absolutely right this time. But what I was trying to say was this. I was citing a concrete example. Here was a judge who was continuing in the office, and his continuance in office later on was found to be totally unconstitutional. I hope I am right on that point. In the interim period, that is, after he had reached the age of retirement when under false pretensions he continued to be in the chair of the judge, he delivered a large number of judgements, and those judgements have never been held to be invalid or unconstitutional.

I would, therefore, say that these judgments *prima facie* or *per se* do not become invalid; they continue to be valid except in a particular case where the judgment was delivered by a judge whose appointment was challenged. I would plead with the hon. Minister that there are several other means open to him regarding those unfortunate men who had got promotion. I have already pointed out the methods of this promotion and appointment. They should never commend themselves to you and to us if we are keen on having some liberty left in this land. This kind of procedure, far from being regularised, should be struck down, and Parliament should be the one body which should not be a party to the encouragement of this kind of flippant tampering with the independence of the judiciary.

Then, I would submit that the Constitution must not be so light-heartedly sought to be amended in this House. I want to make a plea that this should not be made a party issue. Whenever the Constitution is at stake, we should forget our loyalty to this party or that party and we should remind ourselves of the fact that our first and elmentary and primary duty and loyalty is to the Constitution. Even Parliament takes its place under the Constitution. This is the law of the land.

I would, therefore, say that we should not be misled by considerations of the inconvenience to a few individuals. We have to guard the independence of the judiciary for a long time to come. We have to see that the sanctity of the Constitution is not tampered with by Government or the executive being allowed, whenever it suits its convienence, to come before the House, use their majority and have the Constitution amended. I hope that my plea for taking this matter very seriously and resisting this amendment will be taken note of.

Regarding those unhappy individuals, there are a thousand means available to the hon. Minister. I shall just recall one incident before I con-

[Shri Nath Pai]

clude. During the tenure of office of the late Pandit Jawaharlal Nehru, a Bill was sought to be brought before this House giving amnesty—I hope my hon. friend Dr. L. M. Singhvi would recall this—whole-hog amnesty to the then Government for the illegal acts that might have been done by the executive following the emergency, when the emergency was to be lifted. We told the Prime Minister that this kind of thing would be analogous to the enabling Act which the Reichstag passed under the aegis of a man who came to be known as *Schickelgrubber* Adolf Hitler. This phrase so worried the late Prime Minister that immediately Shri M. C. Chagla was advised to look into the whole matter and the Bill was dropped.

Even at this late stage, may I make a plea with the Law Minister that he may consider whether he has no other means of regularising the so-called acts, and whether the individuals cannot be protected in any other manner under an ordinary law and whether it is necessary to amend the Constitution? I think we should not give our consent to this kind of tampering with our Constitution. Other measures can be thought of with regard to appointments. But certainly that is not the issue before this House. I hope, therefore, that my hon. friends, irrespective of their party loyalty, will support me in my plea that we should not give our consent to this tampering with our Constitution.

Shri Joachim Alva (Kerana): I support the Bill moved by the hon. Minister of Law for amending the Constitution. This Bill is called the Constitution (Twenty-third Amendment) Bill. But I would like Government to move as few amendments as possible to the Constitution, whether it be in the life-time of this Parliament or in the future.

Shri Nambiar: Already we have had three in a period of 19 years.

Shri Joachim Alva: This 23rd amendment is in the long line of lists of amendments. I would like that we should move fewer and fewer amendments; for, if the number of amendments is less and less, we should be adding more grace to our Constitution.

The hon. Minister deserves to be congratulated for having printed a small hand-book embodying the Constitution of India. It is a very handy book. In fact, the Constitution should have had as few articles as possible, just like the American or the Russian Constitution. In the old days I used to carry in my hand-bag all the three Constitutions, but I found that our own Constitution was rather bulky, while the Soviet Constitution, I think, had less than 15 articles, if I am not mistaken and the American Constitution contains less than 25 articles; I am giving these figures from memory.

In our Constitution, the fathers of our Constitution have incorporated so many articles. So, we find that the Government of India are compelled to move amendments not all because of any sins they had committed but because of some lapses which others have committed or which the other branches under them have committed namely the States of India or perhaps because of some little mistake that we may have committed by not having been present in the House when any vital issue was being discussed here. The Constitution is a very sacred and important document. Forutnately or unfortunately, this piece of legislation has come before us on the last day or almost on the last day of the session. But I would emphasise once again that the Constitution is a very sacred document and must not be burdened with so many amendments.

I would consider our attempt to tamper with the High Court judges as one of the gravest crimes of our land. The High Courts or other Judges, and the Supreme Court are our only

source of security and they are the sheet-ancher of our democracy. The day we tamper with it in any shape or form, either in the matter of appointment or in regard to the character, nature and integrity of our judges, shall be our day of doom indeed! Our Parliament shall not be worthy of its status if alongside us there are High Courts or Supreme Court where we have men about whose character we have doubt and about whose integrity we have suspicions or in whom moral courage is found lacking.

Lord Denning had come to India in December, 1963. I remember that day very well because I have taken some interest in law courts, lawyers, judges, criminals, convicts and so on, and in fact, some of the convicts who were in jails and who had been sentenced to death were my best friends. So, I used to take some interest. Unfortunately, however, I have come here now. I wish I had gone back to the law courts. I would like to encourage and urge my hon. friend Shri Nath Pai also to get back to the law courts so that we poor Members of Parliament could earn some money honestly through some briefs in our career so that we could keep our life moving when the amenities as M.P.s are so few.

Lord Denning was accompanied by his wife. Unfortunately I was not able to meet either of them. You know who Lord Denning was. He was the man whom the then British Prime Minister, Mr. Macmillan had asked to write a report on Mr. Profumo, which ultimately finished off the career of that Cabinet Minister. Lady Denning said something very important and which is worth remembering. She said that the VIPs should remember that they should not indulge in any trivialities or in other words that no trivialities should be associated with them. There is a great deal of truth in that statement. We often quote the British maximum but we do not practise it. We quote it whenever it suits us but we do not go after that in fulfilment. So far as the triviality in regard to the appointment of judges or tinkering with our Constitution is cocerned, we must take care to see that there is no triviality associated with the judges. Of course, I solidly support Government in their move to amend the Constitution, but I want to share these few remarks with the House.

The character and appointment of the judges is something very important. We must not pollute the very source of justice, and that source is the appointment. We had that unfortunate case in the Madras High Court. My hon. friend Shri Nath Pai has already, referred to it. Unfortunately in our country this question of age is a rotten affair and I shall come to that later. When a judge was appointed in the Madras High Court, a whole body of rules was changed by a Minister there who is a VIP now so that his cousin or brother-in-law or some relation could become a High Court judge. The Hindu of Madras wrote a very strong editorial about it and said that we could not do like that and we should not appoint judges in that manner. We cannot appoint all kinds of individuals to that high office; we cannot appoint our cousins or brothers-in-law as judges unless they are men of merit and character and some legal stuff. That is something very important to remember. Besides, we want men of courage also now. We do not have such types of judges now.

I had referred earlier on the floor of the House to that Bombay High Court judge who tried that long Blitz case; the case went on for a long time, but the plaintiff was not called at all in the box. It was a very rare thing that the plaintiff was not called into the box. We always look out for a defamation case when we can put the plaintiff into the box and fire him and cross-examine him and so on. But that was not done in that case. The plaintiff was no less a man that one who is the chairman of a large bank

[Shri Joachim Alva]

now. Rs. 10 lakhs were take as loan by a cousin of trying judge from another place, when the case was, actually on.

These are things which we cannot accept. Like Caesar's wife, we have to be above suspicion; like Caesar's wife, we must look very respectable and above suspicion. If Judges go on behaving like this, what can we do?

We have had enough charges of corruption, nepotism and other things. Let us keep the High Courts on a sacred pedestal. Let us keep our hands off the High Courts; let us keep our hands off the Supreme Court.

I was the only member who said on the floor of the House when the Vivian Bose Report came up here for discussion that it was very regrettable that the then Chief Justice of India—he is no more there—attended a tea party in honour of his 60th anniversary—I have nothing to say about their celebrating their 60th birthday— let them do that as they like and I wish them many more returns—given by one of those involved in the Vivian Bose inquiry. This is a scandalous state of affairs. It has never been done in Great Britain which still has got great traditions.

This year when we were in the Commonwealth Parliamentary Conference, we had the honour to meet the Lord Chancellor, Lord Gardiner and others. They are a very charming set of people. We have also amongst us great judges, man like Patanjali Shastri Sudhi Ranjan Das and others I cannot name all of them.

I was the only Member of Parliament from my Congress Party who was present in the Supreme Court when the great Shyama Prasad Mookerjee was put on trial. It was one of the greatest trials we have had. I then belt that there was no case and he would be acquitted. Later on when I met the then Chief Justie, he asked me, 'How did you come to that conclusion before?' I said 'There was no case which would have held water. The prosecution must not put up a case in which the prosecutor himself believes that there is no case.' That was what happened in the case of Shyama Prasad Mookerjee, the greatest orator this House has had. Both he and another M. P. belonging to the Ram Rajya Parishad were acquitted.

There is another episode, this one concerning the late Mr. Justice Kania who became the first Indian Chief Justice of India. There is a story concerning the appointment of that Chief Justice. My friend, Shri Raghunath Reddy of Rajya Sabha, who was also there, knows. We were there in the Queen's Party at Buckingham Palace when I met Sir John Beaumont, one of the great judges of India, who retired as the Chief Justice of the Bombay High Court. He said 'I recommended Mr. Setalvad to be my successor as the first Indian Chief Justice of Bombay. We all know Mr. Setalvad. He is one of the most distinguished of our lawyers. When he came and spoke in this House on a Constitutional issue, he thrilled us with his mastery of facts. He can be on the top of the legal world any time. He is a man of character and calibre, a great man who has kept up the highest traditions.

Sir John Beaumont said, 'I recommended Mr. Setalvad to be my successor. But he would not agree where upon the Secretary of State for India recommended a British successor, Sir Leonard Stone. Justice Kania was the seniormost among the Judges. He was angry with me and did not speak to me at all there after. He thought that I was resposible for all that. He did not know that I had nothing to do with that.' Of course Justice Kania became the first Indian Chief Justice of India. He was a very great man. I

mention this because it has come straight from the horse's mouth.

Regarding the appointment of district Judges and magistrates, we must see that the highest traditions are maintained and that there is no departure from constitutional regulation. Their competence for the job and no other consideration should prevail. You cannot just make a man a judge or a magistrate because he is the brother or son or cousin or class-mate of a V.I.P. That should not be done. These judges have to be men of calibre, character, competence and uprightness After all, there is God above and they have to account for their actions before Him, before the seat of conscience. So on no account should there be any departure from these standards.

In regard to age, I am sorry to say that the only community in India which correctly notes the date of birth is my own community of Roman Catholics. When we are baptised, the date of birth is immediately entered in the Church Register. We cannot fool with that document. A nephew of mine once got into trouble over this. He was a government scholar and this trouble arose. But here I find that people with grey hair coolly record their age as 45. People aged 65 claim that they are only 45 and so on. It is time that Government compelled every mother who bears a child to have the correct date of birth properly recorded in the books of government so that at least from 1967 onwards so that there shall be no tomfoolery about the ages of our children. We must have very high standards in this matter.

There was another aspect also. We do not want Judges to be very sensitive. We want them to be men of calibre and character who will not flinch from their convictions. Mr. Justice Lindsay, the Associate Judge of the Supreme Court of the USA who was here recently said that the only Judge to deliver a dissenting judgment in the South Africa case was an American Judge—I forget his name. For an American Judge to write a dissenting judgment on the colour prejudice question requires a lot of courage. We have also the example of a great and eminent judge of our country, Dr. Radha Binod Pal who wrote a dissenting judgment in the famous Tokyo Tribunal judgment regarding war judgment criminals.

I am mentioning all this to emphasise that we must have as our Judges men who are persons of courage, conviction, competence and integrity, who will not stray from the path of their duty. Today we are in a little mess. Uttar Pradesh I am sorry to say—Uttar Pradesh, that is Bharat—can be a leader to all of us in many things but sometimes, it misleads on many small matters also.

Mr. B. G. Horniman, one of our greatest journalists was ordered to be arrested and produced before the Judges of the Allahabad High Court. Mr. Pathak as a lawyer will know that case. What for was it? Mr. Horniman wrote a very inoffensive little article which was considered as contempt of the Allahabad High Court Judges. Again Sir John Beamount came to his rescue. He said, 'I shall not let Mr. Horniman be subjected to the tender mercies of the two European ICS Judges of the UP Court.' Even when Mr. Horniman was dead, they would probably have wanted his dead body to be produced before the court for contempt.

So we do not want our Judges to be very sensitive.

We do not want Judges to countenance the practice of their sons or nephews or other relatives appearing before them on fat briefs and arguing cases. We want the highest standards of impartiality and propriety to be maintained. I was active for nearly 10 years at the Bar and I have seen things for myself. We should keep our hands clean. That is the

[Shri Joachim Alva]

only way to engender confidence and respect.

Here I would also to pay a tribute to Mohammed Ali Jinnah. He was a great and courageous advocate. Once he was appearing and arguing before a European Judge in the Bombay High Court. The Judge at one stage told him, 'Mr. Jinnah, I am not a third class magistrate.' Quick came the retort from Mr. Jinnah I am not a third class lawyer.' Mr. Jinnah was a man of great courage. Whatever may have been his political views which led to the creation of Pakistan and all that division which took place in which the British took a leading part, he was a great advocate. When he died, the Bombay High Court owed him a vote of condolence. But no such condolence was offered. At the time of death, we must forget all our anger and enmity. It was our duty to attend funerals of both friends and foes just as when there is a marriage in our neighbour house, we should join in the festivities and offer good wishes, even if we have enmity. We should not carry our controversies unto the grave. In this respect, I must say that the Bombay High Court, which is the best High Court in India—I am not forgetting the Madras and Calcutta High Courts—lost that grace when it did not make a reference in memory of Mr. Jinnah, who was a brilliant advocate practising before it for many many years, who was one of the greatest lawyers of that time.

I would conclude by narrating one more incident. The Chief Presidency Magistrate, Bombay, had a case in which the lords of journalism were involved. That Magistrate had the courage to call a spade a spade. Mr. Sheani deserves all credit for it. It is such Judges and magistrates with such calibre that we shall always want in this country for the proper administration of justice. We must have in our judiciary men of the highest calibre and character, competence and courage, so that we can maintain the highest stndards in the judiciary.

With these words, I not only support the Bill but I hope that Government will bear all these things that I have said in mind.

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श्री सरजू पाण्डेय (रसड़ा) : सभापति महोदय, यह बड़े दुख की बात है कि हिन्दुस्तान के न्याय मंत्री साहब इस समय यह संशोधन हमारे संविधान में लाने जा रहे हैं। जैसा कि हमारे भाई नाथपाई जी ने अभी कहा है कि इस सरकार की नजर में संविधान की कोई इज्जत नहीं है, उन्होंने यह बात सही कही, अगर समाज में कोई ऐसा परिवर्तन आता है जिसकी वजह से संविधान की सीमाओं को बढ़ाने या घटाने की आवश्यकता होती है, तब तो संविधान का परिवर्तन समझ में आता है, लेकिन सिर्फ कार्यकारिणी के कुछ गलत कामों को वैधानिक रूप देने के लिये संविधान का परिवर्तन दुनियां के न्याय के इतिहास में कभी देखने को नहीं मिले। हमारे न्यायमंत्री और इस देश की सरकार ने जिस तरह से देश में प्रजातन्त्र के नाम पर सारे अप्रजातान्त्रिक चीजों को चला रखा है, जिस तरह से देश में योजना के नाम पर गारी अनियोजित चीजें चल रही है, उसी तरह से अपने गलत कामों को कानूनी रूप देने के लिये बारबार संविधान में परिवर्तन करने के लिये इस सदन के सदस्यों से कहते हैं।

मुझे ताज्जुब होता है, मैंने सुना तो माननीय मंत्री जी से पूछा कि जो गलत नियुक्तियां हुई है, उसके लिये जिम्मेदार कौन है, उन जिम्मेदार लोगों को सजा न देकर संविधान को ही बदल दिया जाय और संविधान का बिल्कुल एक कागज के टुकड़े की तरह रोजाना तबदील किया जाय, मैं नहीं समझता कि यह कहां का न्याय है और उत्तर प्रदेश की सरकार जो हिन्दुस्तान में एक नम्बर की रद्दी और कानून तोड़क सरकार है, जहां कोई ला एण्ड-

आर्डर नहीं है, कोई कानून नहीं है, जहां संविधान और ज्यूडीशियरी बिलकुल इन मन्त्रियों के हाथ का खिलौना बन चुकी है, मुझे मालूम हुआ है, मैं कई ऐसी मिसालें दे सकता हूं कि जजेज की नियुक्ति में और सरकारी वकीलों की नियुक्ति में किस तरह से पार्टी बाजी से काम लिया जाता है और उनके आधार पर नियुक्त किये गये जजों को, जो संविधान के खिलाफ नियुक्त किये गये थे, आज उनको सही रूप देने के लिये माननीय मंत्री जी उत्तर प्रदेश की दुहाई देते है। उत्तर प्रदेश के अन्दर वहां के मंत्री लोग वहां के गवर्नर और वहां के हाई कोर्ट के जजेज से, मुझे ऐसी भी मिसालें मालूम हैं, जहां कह कर अपने हक में फैसला कराने की कोशिश की जाती है और उधर पूरी तरह से इस बात की कोशिश की है कि न्यायपालिका के अधिकारों को पूरी तरह से रद्दी की टोकरी में डाल दिया जाय।

मैं पूछना चाहता हूं मंत्री महोदय से मैं कोई कानूनी पंडित नहीं हूं, लेकिन मैं यह जानना चाहता हूं कि जिन जजों की नियुक्तियां हुई हैं, मुझे मालूम हुआ है कि 11–12 जजों के मामले हैं, लेकिन मंत्री महोदय कहते हैं कि 37–38 के मामले हैं, मुझे ठीक तादाद मालूम नहीं है इनके जो फैसले है, डिग्रियां हैं, उन्होंने खुद एक बिक्षाल देते हुए कहा है कि एक आदमी को कैपिटल पनिशमेंट दिया गया है, वह भी इनवॉलिडेट हो जायगा, तो इतने दिनों तक आप कहां थे, जब संविधान तोड़कर वहां की एक्जीक्यूटिव ने अपने फैसले लागू किये। जब सुप्रीम कोर्ट में मामला गया, तब चार वर्ष के बाद पता चला कि ये नियुक्तियां गलत थीं। यह बड़ा अजीब बात है, मैं तो इस सरकार से कहना चाहता हूं कि इस मुल्क में आप क्या करना चाहते हैं, देश में कोई भी व्यवस्था चलने देना नहीं चाहते हैं। जो भी यहां पर नियम कायदे बनाते है, उसी को तोड़ देते हैं, इन्होंने कसम खा रखी है कि जिस डाली पर बैठेंगे उसको काटे बिना नहीं छोड़ेंगे यह हालत इनकी है।

मैं माननीय मंत्री जी से पूछना चाहता हूं, वह हमारे ही सूबे के है, हमें मालूम हुआ है कि पिछले दिनों उत्तर प्रदेश की मुख्य मंत्री यहां ठहरी हुई थीं, यह कांस्टीच्यूशन अमेंडमेंट बिल इस अधिवेशन में आने वाला नहीं था, लेकिन बाद में मैंने अखबारों में पढ़ा कि श्रीमती सुचेता कृपलानी यहां ठहरी हुई हैं और अपने गलत कामों को संवैधानिक रूप देने के लिये उन्होंने घूम घूम कर बाकायदा कन्वैसिंग किया है मैम्बरों के साथ और सरकार पर दबाव डाला है कि संविधान में यह संशोधन अवश्य किया जाय। यह एक गलत परम्परा है, संविधान का आदर करना चाहिये। अगर एक बार संविधान बनता है तो लाजमी तौर पर उस हालत में परिवर्तन नहीं लाना चाहिए जबकि आपने कोई गलत काम किया है। अगर कोई गलत काम किया है, जिनका एप्वाइन्टमेन्ट किया गया है या जो कुछ काम किया गया है, पहले उनकी व्यवस्था कीजिये। अगर बहुत आवश्यक है, मैं समझता हूं कि यह बहुत गम्भीर मसला है, अगर संविधान का परिवर्तन नहीं होता है तो यह बात सही है कि बहुत सारी कठिनाइयां उपस्थित होंगी, मगर उन कठिनाइयों के उपस्थित करनेवालों से पूछिये कि आखिर आपने संविधान को क्या समझ रखा है? इसलिये मैं चाहूंगा कि इस पर पुनर्विचार करें और संविधान का आदर करें और कोई ऐसा रास्ता निकालें, जैसा अभी हमारे एक माननीय सदस्य ने संशोधन पेश किया है कि इस पर सुप्रीम कोर्ट की राय मांगी जाय। जो फैसले और डिग्रियां उन जजेज को हो चुकी है, वे वैधानिक है या नहीं हैं, इस बात पर सुप्रीम कोर्ट की राय जानी जाय। अगर वह कहते है कि ये फैसले, डिग्रियां, जो उन गलत नियुक्त हुए जजेज ने की है, वे ठीक रहेंगी, तो मैं समझता हूं कि संविधान में परिवर्तन की आवश्यकता नहीं है। बल्कि उन जजेज को फिर उन

[श्री सरजू पाण्डेय]

जगहों पर जोर देना चाहिए और नियम के अनुसार उनका एप्वाइन्टमेन्ट होना चाहिए, वरना इस देश में ज्यूडिशियरी का नाम नहीं रह जायेगा। आधा आपने खा लिया है, आधा जो बाकी बचा है वह ठीक से नहीं चल सकेगा।

इसलिये संविधान में इस तरह से परिवर्तन मत लाइये और कम से कम इस प्रस्ताव पर सुप्रीम कोर्ट के जजों की राय जानिये कि इस सम्बन्ध में क्या किया जाय। इन शब्दों के साथ मैं इस संविधान के संशोधन का विरोध करता हूं।

14.26 hrs.

Dr. L. M. Singhvi (Jodhpur): Sir, after the Constitution (Amendment) Bill was introduced, it was kept in a state of suspended animation for sometime and hopes were aroused in the country that for once saner counsels might prevail on the Government. Once hopes were aroused that this matter would not be taken up so lightly and that the Constitution would be accorded the respect that is due to this sacred document. It is not adjudging us between servire judges and those directly recruited...

श्री राम सेवक यादव (बाराबंकी)। सभापति महोदय, सदन में कोरम नहीं है।

Mr. Chairman: Let the Bell be rung—now there is quorum.

Dr. L. M. Singhvi: It seems to me that the point at stake is far more serious and profound: are the facts placed before us in support of this Bill be correct and do those facts justify the bringing about of a constitutional amendment? I would like to refer to the expectation that was aroused by the decision of the Government to suspend action in this matter and to obtain the opinion of the Attorney General, and since he was not available, the opinion of Mr. Setalvad, the former Attorney General. The hon. Minister should tell us what that opinion was, whether their opinion was ever obtained or not and whether this Bill is being brought before us in consonance with the opinion of Mr. Setalvad. It is heartening and gratifying that while in this country we may disagree violently on many matters, in the matter of amending the Constitution the Opposition parties and indeed even the Members of the ruling party have been united. While Mr. Alva prefaced his remarks that he supported the Bill, he had not one word to say in support of this Bill and all that he said runs completely counter to the very principle of the Bill and to the suggestion that this Bill should be passed. The statement of objects and reasons appended to this Bill says:

> "Appointments of district judges in Uttar Pradesh and a few other States have been rendered invalid and illegal by a recent judgment of the Supreme Court on the ground that such appointments were not made in accordance with the provisions of article 233 of the Constitution."

In another judgment, the Supreme Court held that the power of posting of district judges under article 233 does not include the power of transfer of district judges from one station to the other, and the power of transfer is vested in the high court, under article 235 of the Constitution. It is quite clear that the action of the State Government in the appointment of these district judges has been contrary to the Constitution—

Mr. Chairman: Order, order. The hon. Minister of Commerce has to make a statement on the raw cotton supply situation, about which concern was expressed in this House.

14.30 hrs.

STATEMENT RE: RAW COTTON SUPPLY SITUATION

श्री दे० वि० पाटिल यवतमाल : सभापति महोदय, मैंने महाराष्ट्र और गुजरात के संसद सदस्यों के दस्तखतों से कपास के बाजार की विकट स्थिति के बारे में और कपास की सीलिंग प्राइस इस तरह के बढ़ाने के बारे में ध्यान आकर्षण प्रस्ताव । दिसम्बर, 1966 को दिया था ।

अध्यक्ष महोदय : आर्डर, आर्डर । आप तशरीफ रखिये ।

श्री दे० वि० पाटिल : मैं आपके जरिये से पूछना चाहता हूं कि हमारे सार्वजनिक महत्व के ध्यान आकर्षण प्रस्ताव का तरफ मंत्री महोदय का ध्यान है या नहीं ।

Mr. Chairman: Order, order. Shri Manubhai Shah.

The Minister of Commerce (Shri Manubhai Shah): Mr. Chairman, Sir, the House would recall that on the 25th|26th of November,—

Mr. Chairman: How many pages?

Shri Manubhai Shah: Six pages.

Mr. Chairman: It may be laid on the Table.

Shri Indrajit Gupta (Calcutta South West): But as in the case of Call Attention Notices, we should be permitted to ask one question each.

Mr. Chairman: Order, order. If he just lays it on the Table of the House, then on Monday, you can ask questions, because that will save some time also.

Shri S. M. Banerjee (Kanpur): If the hon. Minister would be kind enough to supply a copy of it in advance, we can put questions after studying it.

Mr. Chairman: That will be done.

Shri Manubhai Shah: Sir, I beg to lay the statement on the Table of the House. [*Placed in Library. See* No. LT-7513/66].

CONSTITUTION (TWENTY-THIRD AMENDMENT) BILL—*contd.*

Mr. Chairman: Yes, Dr. Singhvi.

Dr. L. M. Singhvi: Evidently, as two Supreme Court judges pointed out, the State Government of Uttar Pradesh has acted in clear contravention of article 233 which relates to the appointment of district judges and article 235. As a matter of fact, if I may say so, the State Government has acted in clear contravention of the Constitution and has acted contemptuously of the Constitution. After all, articles 233 and 235 are very clear, and they clearly enjoin upon the State Governments to function in a particular way in respect of the judicial officers. While this was quite clear in the Constitution, the State Government resumes upon itself to treat the high court as a transmitting office; the State Government presumes to treat the high court with contempt, with disregard and, if I may say so, with an utter lack of respect. In this case, since the Supreme Court has struck down the appointments, it is only right that the Union Government should come here, not in defence of the action of the Government of the State but in rectification of it. What the hon. Minister of Law is claiming is that he seeks to rectify through this Act the mistakes or the errors of the lapses that were committed by the State Government. It is far from the actual situation. As a matter of fact, if he was seeking only rectification, that would have been a different matter. But that is being sought is to validate what was wrong; what is being sought is that what was wrong and unconstitutional is sought to be made constitutional on the ground which is not correct.

[Dr. L. M. Singhvi]

In the Statement of Objects and Reasons of the Bill, it is stated that the functioning of the district courts in Uttar Pradesh has practically come to a standstill. I agree that after the constitution of the courts was exposed to certain objections, it may be a question of doubt. It may throw some doubt on the functioning and on their acts, but I would like to point out here that by no means the working of the judiciary in Uttar Pradesh has come to a standstill. I learn that out of the 10 directly recruited judges whose cases are in doubt, some were recruited while the matter was pending before the Supreme Court; that was hardly a correct thing to do for the State Government. What is more out of the 10 directly recruited district judges, why should the Government be so concerned about the apintment or validation of the appointment of these few judicial officers and even go so far as to bring about a constitutional amendment? It seems to me that this is quite improper, and the Government is doing this in a somewhat light hearted manner. It is wrong to say that the working of the judicial courts in Uttar Pradesh has come to a standstill or has been paralysed. I would like the hon. Minister to clarify as to how he came to make the statement like that, in the Statement of Objects and Reasons appended to this Bill, because I find from the information supplied to me that this is not the actual situation. As a matter of fact, the courts of these four district judges whose appointment has been invalidated by the Supreme Court have been functioning. The judiciary is functioning normally in the State of Uttar Pradesh. I would like to see that this matter is reconsidered even at this stage by the hon. Minister. Let the hon. Minister tell us as to whether Mr. Setalvad's opinion has been obtained and whether this action is in consonance with the opinion of Mr. Setalvad.

Finally I think the hon. Minister should tell us about the actual situation of the functioning of the judiciary in Uttar Pradesh. I hope that he would be willing to reconsider this matter and perhaps to withdraw this Bill from the House.

Shri G. N. Dixit (Etawah): Sir, I rise to support this Bill. A good number of hon. Members on the Opposition,—some of them are eminent lawyers—charged the Uttar Pradesh Government of *mala fides* with regard to these rules. My submission is this. The suspicions of theirs is ill-founded. If they know the facts as they are, I think they will themselves agree with me that the reasons that they have given for their suspicion were not well-founded.

What is the position? It was in the year 1951, 15 years ago, that these rules were framed and at that time, when the rules were framed, that illustrious and eminent statement and jurist, Pandit Govind Vallabh Pant was the Chief Minister of that State. The rules were framed after full support from the Advocate-General and under the provisions of the Constitution. They were all framed under article 309 of the Constitution which I shall now read. I shall leave the first part of that article, which refers to recruitment and conditions of service. I shall read the proviso; the rules were framed under the proviso, and the proviso reads as follows:

> "Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature..."

It was under this provision of article 309 that these rules were framed. These rules having been framed, they were acted upon completely for 15 years. No challenge came from any quarter for complete 15 years.

Shri Bade (Khargon): Are these rules meant for the judicial services or the other services in the State?

Shri G. N. Dixit: The Government has got the power to make rules about all the services. These rules are about the judicial services. This is in the Supreme Court judgment itself and the high court judgment itself. I shall refer to Issue No. 1 that was framed before the Full Bench of the high court, and that was whether the Uttar Pradesh Civil Service (Judicial Branch) Rules, 1961, notified to have been made by the Governor were under the Constitution. These rules were made under article 309. Therefore, the question does not arise so far as the point that they were framed under article 309 was concerned. Having been framed, they were acted upon for 15 years without any challenge. When the challenge came, the High Court held that the rules were valid and rightly framed under article 309. The matter went to the Supreme Court which held otherwise by an interpretation of the words of article 233. When there is a difference in judgment between two courts, when the thing has been acted upon for 15 years, this argument will not hold good that there was no legal case for the Government to have framed these rules.

Every day matters go to the Supreme Court and the judgments of all the High Courts are set aside. At the moment, a matter has been heard for 25 days by the Supreme Court. From the time the Constitution was framed, it was acknowledged that the Parliament has got the power to amend fundamental rights. Several amendments have been made by this House. The Supreme Court—its constitutional bench—has upheld the Zamindari Abolition Land Reforms Act of UP and Bihar and so many other Acts have been upheld by the Supreme Court—Acts of Parliament amending fundamental rights have been upheld by the Supreme Court. But for 25 days, all the 11 judges of the Supreme Court have been hearing the arguments that this Parliament has no power to amend fundamental rights. If this is upheld, all those decisions of the Supreme Court and all Acts passed by Parliament will vanish. Can anybody say what shall be the decision of the Supreme Court in a particular case? For 15 years these rules were acted upon. Now the Supreme Court holds that they are void for two reasons. One is that a class of judicial officers generally called JOs and who are entrusted with revenue work have been considered and from that rank also people have been taken in, which was prohibited by the provision of article 233. The second reason is there should have been consultation by the Governor with the High Court and not with two judges. The committee that was constituted under the rules consisted of 2 High Court judges and one judicial secretary of U.P., the legal Remembrancer. The Supreme Court held that the consultation of the Governor should have been with the full court. May I say, Sir, this committee never finalised anything. It sent the whole recommendation to the full court. It was with the approval of the full court that the matter went to the Governor and the appointments were made. But the Supreme Court goes not by substantial compliance, but by the interpretation of the statute as passed by Parliament and in their wisdom, they held that there was not complete compliance with that article.

In any case, there was substantial compliance. Then the question arises, what is the duty of this House in the matter? For 15 years so many judges have been appointed and thousands of cases have been decided. I have great regard for my friend, Mr. Nath Pai, but I am sorry he has not read between the lines correctly so far as these two decisions of the Supreme Court are

[Shri G. N. Dixit]

concerned, where it has been said that if a judge is held to be wrongly appointed or as holding office without validity, all these decisions given by him will be questioned. I am reading from the full bench decisions to which my hon. friends have referred. One case was referred to by the Law Minister also. In the case H. Kumar Bose Vs. Jyoti Prakash and Jyoti Prakash Vs. the Chief Justice, Justice Gajendragadkar said:

> "Apart from the Government of India, it would *prima facie* be theoretically open to any litigant to raise the question about the competence of a judge to hold his office as such on the ground that he has attained the age of 60 years and if a serious allegation is made in that behalf, it may have to be judicially determined in a proper proceeding."

The other judgment says:

> "....a serious situation may arise because the cases which the said judge might determine in the meanwhile would have to be reheard, for the disability imposed by the Constitution when it provides that a judge cannot act as a Judge after he attains the age of superannuation will inevitably introduce a constitutional invalidity in the decisions of the said judge."

After these two pronouncements of the Supreme Court, can this House say positively that the decisions given by these judges are perfectly all right, because the High Court has said so? It is the Supreme Court whose declaration of law is final in this land, not that of any High Court. With these two decisions of the Supreme Court and the appeal lying with the Supreme Court and 25 days having been given by the 11 judges in hearing arguments against all those decisions which they themselves have given, who can say that all these judgments which have been given are correct? What is the duty of this House and of the Government? For 15 years, on account of one interpretation which was held to be good by the law officers of the State and by the High Court, they have been acting according to those rules and thousands of cases have been decided. What was the fault of the citizen? The Minister read that provision where 'District Judge' has been defined. From the munsif onwards up to the District Judge, everybody is a District Judge. All those appoints and all those decisions are invalidated. Is it not the duty of the House to clarify the position and say that all those appointments and decisions hold good?

14.49 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

A challenge has been made that it is not proper that constitutional amendments should be made so frequently and the Supreme Court's decision should not be tried to be side-tracked. I meet this challenge. I congratulate the Law Minister. For the first time I say this is a Bill in which the Supreme Court's decision has been honoured perfectly. There is no desire to supersede the Supreme Court's decision. I want you to persue these things and not to hold opinions after a cursory glance.

I want you to see the Bill as it is. What the Supreme Court has done is this. The Supreme Court has held that the appointment of judicial Law officers was wrong, the appointment of those officers who were holding revenue courts was wrong. This does not only to those judicial officers although they were appointed before the Supreme Court decision is complied with. From the time the decision of the Supreme Court has been made, after that all appointments shall be done according to the decision of the Supreme Court as interpreted by the Supreme Court and not

as interpreted by the rules. The only thing attempted by this Bill is that all those decisions which were given before this Bill comes into force and all those appointments of officers other than judicial officers which were made before under these rules should be held valid. My submission is, it is the duty of this august House to help the citizens of Uttar Pradesh to see that the judiciary in the State does function and the crisis that has been created by the Supreme Court decision may be set right.

With these words, Sir, I support the Bill.

Shri N. C. Chatterjee (Burdwan): Sir, a serious situation has developed in the State of Uttar Pradesh. The tangle has not been created by Shrimati Sucheta Kripalani or her Cabinet. It is a legacy from the past. In 1951 the U.P. Judicial Service Regulations were enacted when the late Pandit Pant was the Chief Minister. I was in Allahabad in connection with the Allahabad High Court Centenary celebrations, and after I heard a number of judges and lawyers I was convinced that the time has come when the Government has to take some action to put the whole thing in order, and the Government would have been guilty of dereliction of duty if they had not sponsored a Bill of this character.

Sir, nobody likes tampering with the Constitution. I am one of those who have raised their voice and protested against the frequent amendments of the Constitution. I remember that I won the great case of the Bengal Immunities where the Supreme Court struck down a previous judgment of that court itself—in the Bombay Motors case—and it declared the sales tax as illegal as it was imposed in certain States. But the then Government introduced a Bill to validate that decision. I raised a point of order that it was unconstitutional and it should not be done in this manner. Pandit Nehru was the Prime Minister then. He said that he would call the Attorney-General. The Attorney-General was called and there was a debate. Ultimately it was accepted as constitutional and the Supreme Court upheld it as constitutional.

Shri S. M. Banerjee: Let us call the Attorney-General here also.

Shri N. C. Chatterjee: I am sorry the Attorney-General is in Geneva now fighting the great battle of India against Pakistan before the Kutch Tribunal, otherwise it would have been all right.

Shri S. M. Banerjee: Then refer it to the Supreme Court.

Shri G. S. Pathak: The Supreme Court will say what they have already said.

Shri N. C. Chatterjee: It will not be right to criticise the decision of the Supreme Court. We have got to accept it as final. Article 141 of the Constitution says that the judgment of the Supreme Court shall be binding on all. There may be some exaggeration, as Shri Nath Pai has pointed out, in some of the statements in the Statement of Objects and Reasons. But one statement is correct, that as a result of this judgment a serious situation has arisen and doubts have been created as to the validity of a number of judgments, decrees and orders. Remember, after 1951, three times judicial appointments of this nature were made. In 1953 appointments were made, some years later another round and then in 1963. Therefore, three sets of judges were appointed from 1953 and they were posted in different districts. They have been functioning in different districts as District Judges, Sessions Judges and so on. Their judgments are being challenged. My friends are right that the Full Bench has decided, but now the decision of the Full Bench of the Allahabad High Court is itself under appeal and the Supreme Court may strike it down. I am, therefore, pointing out that the situation is such that hundreds of

[Shri N. C. Chatterjee]

judgments, decrees and orders are in peril and the whole situation should be clarified.

What has happened? What has happened is that under article 233 the Governor or the Government of Uttar Pradesh should have consulted the High Court. Ordinarily the High Court does not sit. The High Court appoints two or three judges and they decide, possibly, in consultation with the Legal Remembrancer in my State or the Judicial Secretary as he is called in Uttar Pradesh, they decide who should be appointed judges. What happened here was, the Governor nominated two Judges of the High Court and the Judicial Secretary. Actually the judges themselves should have appointed these two judges, but here the Judges were appointed not by the High Court but nominated by the Governor. That is the whole trouble. Nobody doubts the ability of these people, the eligibility of these people, the qualification of these people. Their record has been quite clean and good and up to the mark. Why should these people suffer?

I have been looking into this matter a little carefully and I find our Supreme Court and our Federal Court have affirmed the view taken by the House of Lords in 1917—Appeal Cases, in the great case of 1917—Appeal Cases at page 174—Montreal Street Railway *versus* Normandin—I am reading from *Maxwell's Interpretation of Statute*—I, Tenth Edition—page 381:—

> "On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be general understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only."

The same principle was applied by the Federal Court in 1945. The same principle is confirmed by the Federal Court in construing a section of the Government of India Act and this very case was valid. They said:

> "Direction for consultation is directory and not mandatory."

They have referred to Section 256 which also speaks about consultation with the High Court. They have said:

> "The direction as to consultation laid down in S.256 is directory and not mandatory and non-compliance with it would not render an appointment otherwise regularly and validly made ineffective or inoperative."

The principle is this. Why should these poor people suffer? Why should the litigants suffer? Why should the citizens suffer? The principle laid down by the House of Lords in the Montreal case is very sound. They have said that if it leads to general inconvenience, injustice to persons who have no control over those entrusted with the performance of duty etc. etc. why should they suffer? Both in the Federal Court and in the House of Lords this principle has been invoked. I am very happy to tell you that in 1957 the Supreme Court of India also held it in one case—1957 Supreme Court Page 912. I am advocating that this principle should be applied here.

It is true there has been some confusion. It may be that the Minister has gone a little too far to say that the entire judicial administration is coming to a stand-still or has become paralysed. It cannot be so. At the same time, we do not know what the position is. Supposing they remove them, then the entire judicial structure would have to be re-shuffled

completely. It not merely affects these 17 or 18 persons but it affects others also. As I said, from 1953 three times Judges have been appointed in this manner. Those judges have delivered hundreds of judgments. Ordinarily, roughly, 600 to 700 judgments are delivered in each year by each judge. Therefore, these judges have delivered over 2000 judgments every year and in these 13 years many thousands of judgments have been delivered by them. According to the Supreme Courts decision, their judgments have not been directly challenged, but they will also have to be set aside as invalid. Then three judges were appointed and then eight and then six judges were appointed. If all the 17 judges go, very disturbing effects will be created on the entire judicial system.

15 hrs.

I am, therefore, submitting that although we deprecate periodical amendments of the Constitution and partial obliteration of our organic law, still situations do develop, not due to the fault of the citizens who will be penalised or of the litigants who will suffer. Therefore, this very salutary principle that you should look upon them as directory, so far as appointments and functions of the appointees are concerned, and not mandatory, should be held to be valid and we should proceed with this Bill.

It would have been much better if it were possible to have the opinion of the Attorney General or to refer it to the Supreme Court and have the candid opinion of the Supreme Court. But you know, Sir, that will take time. In the circumstances, very reluctantly, not very happily but with a certain amount of caveat, we are saying that there is no way-out and we should put the entire judicial system in order.

Actually, two Judges of the High Court and the Judicial Secretary had been appointing the judges for the last 13 years all along. There has been no deviation from that. Look at the practical side of it. Supposing, in conformity with article 233 this would have been done, what would the High Court have done? The Chief Justice would have been written to, the Chief Justice would have nominated or the Full Bench meeting would have nominated two Judges and they would have appointed them. Two senior Judges were there.

Then, the Judicial Secretary is an outsider. He is not a judge. He may be a potential judge. In my State of West Bengal, I know, the Judicial Secretary's post is the post from which a High Court Judge is recruited. He is practically called a potential judge. Ordinarily, his voice is not so effective as the voice of the other two Judges. Surely, in a committee of three, two would dominate over the third. Therefore, the voice of the Judges must have predominated.

Then, qualified men who have put in the requisite number of years of practice or who have served the State in some capacity according to the rules have been held to be perfectly eligible officials and they have been appointed. They have discharged their duties faithfully and loyally and have established a good record for themselves. Some have earned the promotion. Should they now be turned down and the citizens penalised, judgments invalidated? Should we wait till the Supreme Court decides whether the Full Bench judgment is correct or not? Suppose, after two years we get a judgment that all these judgments were wrong. So, there should be a certainty in this. People do not know whether they are appearing before a judge who is properly appointed or not. They do not know. All these 17 or 18 judges are also feeling rather embarrassed.

Shri S. M. Banerjee: They blundered and were waiting for 15 years.

Shri N. C. Chatterjee: I am only pointing out the situation that has now developed. I am not justifying their

[Shri N. C. Chatterjee]

action. But having regard to the improper action—we must accept it as illegal action, as unconstitutional action—an unconstitutional action having been done with the concurrence of two Judges, and in every case men qualified to be appointed have been appointed and they have rendered a good account of themselves, I think, in the interest of all concerned we have got no other alternative but to submit to this kind of legislation and put the house in order.

Shri Narendra Singh Mahida (Anand): Mr. Deputy-Speaker, Sir, this Bill involves appointments of district judges in Uttar Pradesh which were challenged in the Supreme Court which ruled that all such appointments were invalid in accordance with articles 335 and 333. Under article 141, as Shri Chatterjee very rightly said, the decision of the Supreme Court is final. That is why we have to validate these appointments. We have to correct the errors which were committed by the authorities previously.

Shri S. M. Banerjee: You agree that they had made a mistake. Then, why not punish them for the mistake?

Shri Narendra Singh Mahida: I am coming to it.

At the introduction stage of this Bill, Shri S. M. Banerjee had stated:—

> "the validation of the appointments, posting, promotion and transfer of district judges, which were held illegal under article 323 should not be allowed to be validated."

Shri Chatterjee just now gave the reply to that by saying that these appointments were made by the Governor instead of by the Court and it was a technical error probably.

Shri S. M. Banerjee: What I said was that the appointments need not be validated. What they are going to do is to validate the appointments. Why should this Government for 15 years behave like Kumbhakarna? For 15 years they slumbered and now suddenly they realise it.

Shri Narendra Singh Mahida: Anyway, Shri Banerjee has his own right to say what he wants to say. I have to say that you cannot punish after 15 years, as it is, if 15 years ago some errors were committeed. Even according to the Supreme Court—and we cannot challenge the Supreme Court order—even if it is taken for granted that it was a technical error, what can we do about it? What have to correct all those judgments. We cannot go back to 15 years and say that all these judgments were delivered wrongly. Then, a great confusion will be created.

Shri S. M. Banerjee says that he is not against the validation of those judgments, because the judgments, decrees and orders passed or sentences awarded, should be validated. Shri S. M. Banerjee asked for the validation of that. His objection is only to the validation of appointments. The situation has arisen out of the judgement of the Supreme Court in which the appointments of district judges in Uttar Pradesh and three other States have been rendered invalid because their appointments were considered not in accordance with the provisions of article 233.

Through this Bill we are introducing a new article, 233A, which states:—

> "Notwithstanding any judgement, decree or order of any court,—
>
> (a) (1) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State,".

It is a well known practice that we have been selecting eminent lawyers who are experienced and appointing them as judges in the High Courts or in the lower courts. This practice is a welcome practice and it should be continued. If Members object to that also and say that they should also come through the public service commission, I do not think eminent lawyers' services can be utilised. When we want fair jurisprudence and when we want honest judgements, we must have this provision. Why should we object?

The other judgement also had created the position that the power of posting of district judges under article 233 did not include the power of transfer of such judges from one station to another station. All these provisions in article 233 are meant to be changed.

These two judgements have created a certain situation which this Bill seeks to correct. What is being done is that those persons, who were not ineligible or who were eligible under the Constitution, alone are being regularised. It is not a matter of merely protecting any individual; it is really a matter of protecting interests of litigants. Without this nobody in future will believe in the judgement of courts. It is this situation which is being corrected and regularised through this Bill.

Dr. L. M. Singhvi remarked at the introduction stage of the Bill, very rightly, that the device of constitutional amendments, even if it was permissible under the Constitution, was not to be caused in a light and casual fashion. This should be noted. But the facts are that the judges had delivered the judgements, whether the Government had proper authority to appoint them or not, but these judges had passed sentences and these sentences and judgements had been carried out. No legal wrong had been done to anybody. There was a procedural mistake according to the Supreme Court. We are regularising the constitutional position and hence this Bill. Through this Bill we are only validating what had taken place. I therefore, support the Bill.

Shri Nambiar: I am strongly in opposition of the Bill and I request the whole House to throw it out and I hope that when the voting comes, it will be thrown out. I strongly support the points made by Mr. Nath Pai.

An hon. Member: We shall make it impossible.

Shri Nambiar: Let us see.

Is the Constitution to be amended for the sake of the evils committed deliberately by certain officials of U.P. administration? The very reading of Article 233 of the Constitution shows this very clearly. It is a very well written clearly. But after 233, 233A is coming and that Article gives a bad reading. Let us see what it says:

> "...no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State..." etc., etc.

A long rigmarole is given. Is that to be added on to this Constitution? What for? We do not know the reason. The reason that the hon. Minister gives is that there is the possibility of all the judgments delivered by these judges getting invalidated later on. So far the Allahabad High Court has not invalidated them; on the other hand, the Allahabad High Court has validated them. It is contended that suppose it goes to the Supreme Court and the Supreme Court says that all these hings are bad in law, then what will happen. That is a hypothetical position. Suppose something happens to the whole world tomorrow or something falls on this House tomorrow, then what will happen That is a thing which we will face when it

[Shri Nambiar]

comes. We need not bring any Constitutional Amendment for that now. Let us not mix the problem of the people who are affected by these decrees. The hon. Minister wants to convince us by saying that the degrees already made are bad in law, the people affected are to be safeguarded and, threfore, the House must pass the Bill. We cannot agree because, the facts are not so. The decrees so far given are not bad in law. On the other hand, the decrees so far given are good in law, according to the Allahabad High Court's judgement. Then what is bad in law? Something is bad in law, and that is, the appointment of 11 judges. This House—the Parliament—with its Constitution (Twenty-Third) Amendment Bill is not going to regularize the appointment of those 11 judges. After all, the appointment of 11 judges or the removal of 11 judges is too small a matter for this House. This House deals with the problem of 40 crores of Indian people and those people who are helping us abroad. We are not here to look after the cases of 11 judges of U.P. District Courts. If there is a malady, if there is a mistake, those who are responsible must suffer.

An hon. Member: Must be dismissed.

Shri Nambiar: They may be dismissed. They may be put in those prisons where the District judges put others wrongly. My point is this. We should not be called upon to hold the ill-gotten baby of the misdeeds of the U.P. administration. We are not here to do that. Not only this, the black spot of it, the scar of the ill-gotten baby will be imprinted in the Constitution for ever, to be seen by all—not only in India but everywhere. It will be a very very bad and sorry affair that this will be imprinted there. This is not a separate legislation. I can understand if there is a separate legislation called the Validation of the Decrees made by the District Judges of U.P. Bill. You may bring a separate Bill like that and we may pass it. But here in the Constitution which we hold very high, if this—I may be excused for saying this—nonsense is added on to the Constitution, then it will look that the entire work of this House is also nonsensical. Please, for Heaven's sake, do not make us commit that.

I must answer one point. It is contended that if all the decrees delivered by these district judges become invalidated later on, the people will suffer. I have an answer for that. If at all such a contingency arises, then the House will be there to save the people; we will go to the rescue of the people who are affected by this and say that since somebody had committed mistakes, the people should not suffer. Then we will pass a Bill validating anything. Then you will get the fullest co-operation from the Opposition. Then only you will be justified in doing so and not now, at the fag end of this session of the Third Lok Sabha. Unfortunately for us, this session has been extended just for this; otherwise, we would have finished the whole thing yesterday itself and gone back. We are made to stay here for one more day to pass this despicable sort of legislation—I may be excused for this expression. They are not sure that it will be passed today and that is why, they have extended this session upto Monday, the 5th December, so that they can lick their wounds and see what could be done.

I have a great respect for Mr. Pathak, for the efficient way in which he has been piloting this Bill. But I am sorry to say that he has confused us. I was also partly confused. I asked him whether the jail gates of U.P. would have to be opened and he said, 'yes, it is likely'. I went and verified the whole thing. Now I am convinced that this is a bad law and it should not be allowed to be passed.

I request you to help us in getting rid of this Constitution Amendment Bill.

Shri A. N. Vidyalankar (Hoshiarpur): Some friends on the Opposition side have very vehemently opposed the amendment to the Constitution. But I think they have not tried to realise what is going to happen if this amendment was not passed. In fact, I believe, it was really most reluctantly that Law Minister has brought this amendment. No one desires to make an amendment to the Constitution every now and then. No one desires that every day we should come before Parliament and propose amendments to the Constitution. I also agree with all the friends—I think the Law Minister also agrees—that frequent changes in the Constitution really bring down the respect for the Constitution and it does not do credit to us. But having said that, I also agree with my hon. friend who had just spoken, Mr. Nambiar, that those who have been guilty, those who could not take proper action at proper time and those who have been responsible for creating this situation, should be punished. But the difficulty is whatever punishment you might impose, howsoever severely you might punish them, that will not solve the problem of the people who would be affected if we did not make this amendment to the Constitution. That is the difficulty. We should concentrate our attention on those who have been responsible for all that, and I would request the Home Minister and the Government that they should take proper action; they should issue proper instructions to the administrative officers and wherever they neglected their duties or faltered, they must be punished very severely because they created this situation. But having said all that, I would say that this does not solve the problem because the administrative difficulty is there; that confusion will be there: if we did not accept this amendment, that will create a new situation which would be worse than the present one. Therefore, I agree very reluctantly to this amendment. But I may assure you that no one just wants an amendment of the Constitution and no one agrees to it readily. We also desired that the Law Minister will take care to see that amendments were not brought forward very frequently, but still we had to accept this amendment because there is no other go.

There is one thing more that I would like to add. Ours is a new democracy. We are still in a nascent State. We made our Constitution some years ago. What is the process going on now? In fact, our judiciary and legislature are trying to correct each other. When we passed some law, some amendments were suggested; or when certain difficulties arose in the Constitution and the judiciary took some attitude, we come before Parliament and we try to correct ourselves. This is the process that is going on and I think it is a healthy process that the judiciary and the legislature are correcting each other. That is very necessary and very essential and very inevitable at this stage of our Constitution, when we are groping in the dark and we are trying to proceed further and trying to correct the provisions of our Constitution and our laws. So, this process should not altogether be rejected. I think it is a healthy process and we should take it in that spirit. We should not think that the judiciary has intervened or that the judiciary has imposed its will on the legislature or that the judiciary and the legislature were on fighting terms. In fact, they were trying to correct each other and help each other. Therefore this process should be welcomed. I think that this process will continue for some more time, and afterwards we shall come to a stage where the defects which we are finding and which we could not foresee earlier would have been removed and then frequent amendments to the Constitution would not be necessary. We should consider this Bill in that perspective that when the judiciary points

[Shri A. N. Vidyalankar]

out something we just try to correct ourselves and give a correct shape to our Constitution. It is in that spirit that I would say that this amending Bill should be accepted.

Shri Bade: I strongly oppose this Bill because this Congress Government is habituated to comitting mistakes first and then coming to Parliament to correct those mistakes. The Statement of Objects and Reasons appended to the Bill says:

> "As a result of these judgments, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity.".

I would submit that this is not a correct statement of facts. Is it not a fact that the judgment of *de facto* judges is never declared void or illegal? And yet the hon. Minister has said that after 8th August, the judgments will be declared invalid. If doubt has been thrown, why should He not refer the matter to the Supreme Court and ask for their opinion as to whether the judgments will be valid or not? The Allahabad High Court has already decided that the judgments of these judges are not invalid.

Then, it has been stated:

> "The functioning of the district courts in Uttar Pradesh has practically come to a standstill.".

That is also wrong. According to my knowledge and my information, about 100 judges are functioning at the district level and they have been appointed in the U.P. Judicial Service; only 11 judges are affected; and out of these 11 judges also, the question arises only in the case of four judges, because the rest are serving somewhere else.

I find that in the Congress Party also there was some difference of opinion, and no less a person that Shri Raghunath Singh himself had said at the party meeting that only four judges would be affected and not all the judges. For the sake of these 11 judges or 4 judges only, are Government going to snatchaway the rights which are given to the public at large? It is very essential that the judiciary should remain quite independent of the executive. But what is the provision that we find in the Bill? It reads thus:

> "no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and
>
> (ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twenty-third Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void.....".

In other words it means that it shall not be questioned in any court. Under the Constitution, certain rights were given to the public and they were given an assurance or guarantee that they will have an independent judiciary. Now, under this amendment, if appointments are made by the executive or by the Chief Minister or by the Public Service Commission of a State or by the Home Minister, that cannot be questioned. That is really a mischievous provision, for that would mean that the executive would have the upper hand over the judiciary.

I thought that Government would bring forward some amendment to ensure the independence of the judiciary; I had thought that they would appoint some Judicial Minister or Minister of Justice and make judiciary a separate portfolio or a separate Ministry. This is what Shri M. C. Setalvad has to say on this matter. The report goes on as follows:

"Shri M. C. Setalvad, former Attorney-General of India said here this afternoon that a constitutional change by providing for a Minister of Justice independent of the Home Ministry for making judicial appointments and supervising the administration of justice was an urgent need widely felt for securing the independence of the judiciary in India. Mr. Setalvad who proceeded said, the role of the judiciary was dependant upon the judiciary functioning entirely independent of the executive; particularly in a welfare State where the executive powers and functions were legitimately growing and were bound to grow further, the independence of the judiciary, he suggested, should be secured by the selection of proper persons as judges. In that direction, the establishment of a Ministry of Justice independent of the Home Ministry to select the right persons to function as judges was bound to have a good effect.".

I would also like to refer to the Law Commission's report in this connection. There is a circular to the following effect in Madhya Pradesh and I shall point that out presently by quoting from the Law Commission's report itself. This is what the Law Commission has to say:

"One may in this connection draw attention to a provision in the Madhya Pradesh Judicial Service Recruitment Rules, 1955, which is as follows:

"21(2). The Governor may, if he thinks fit, appoint a Judge of the High Court to be present at the interview. This judge so appointed shall advise the Commission on all points on which the Commission may require his advice, but he shall not be responsible for selection of the candidates.".

These are the rules framed by the Madhya Pradesh Government. The Commission has also stated:

"In the result, the judge's view of the eligibility of the candidate does not prevail. It is, therefore, not surprising that in these circumstances the High Court judges in some of the States have refused to participate in conducting the test. As has been stated 'this method appeared to have been abandoned, because, as is generally believed the role of the Judge was reduced to that of a supernumerary spectator and the High Court naturally declined to accept such a position.".

In regard to the Public Service Commission, this is what the Commission has to say:

"Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairmen and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations.".

[Shri Bade]

The Commission further says:

> "However, the evidence of experienced lawyers and some of the judges clearly established that the impression in the public mind was that the Commissions did discharge among other functions that of redressing communal inequality in the State Judicial Service.".

My contention is that the first point that the hon. Minister has made that all the judgments would be thrown as invalid is not correct. If there is any doubt Government should have referred the matter to the Supreme Court. Secondly he has stated that the working of the judiciary has come to a standstill. That is also not correct.

Besides, if this amendment were made, everywhere, the Chief Minister, the Home Minister plus the politics and plus the party feelings will enter the field and all the judges would merely become tools in the hands of the Chief Minister. Articles 233 and 235 give the judiciary independence from the executive in the matter of appointments etc. But by this amendment Government are enunciating a very dangerous principle in the Constitution which would take away the independence of the judiciary.

Therefore, I oppose this Bill.

Shri K. C. Sharma (Sardhana): I am in a position to say that the Ministers concerned and the government machinery in U.P. did what they did with the best of motive when they were lacking the necessary personnel in the judiciary. There is no point in reading into it something that did not exist.

The Judges were qualified. They were appointed by competent authority. The only mistake was that instead of referring to the High Court, two of the Judges of the High Court were called. Those very Judges might have been sent by the Chief Justice. It was just a procedural mistake. These mistakes do happen.

I think one of the mistakes we made was to give to ourselves too long a Constitution with too many provisions. Human life refuses to be restricted to the letter of the Constitution or to the letter of even the scriptures. What was good in the days of the Vedas is no longer true today; what was the situation in 1946 is no longer true today.

Shri S. M. Banerjee: So there is no Constitution now!

Shri K. C. Sharma: The Constitution exists. A Supreme Court Judge in the USA has said:

> "If men were angels, no government would be necessary. If angels govern men, no law would be needed. The problem is when men govern men. Then let government govern the governed and next government governs itself".

The point is that when government governs by men, they are bound to err. The question that governing power is limited, is the question. The first question is that the King's Government, as they used to say, must be carried on. The principle of government in modern times is that justice is done to the common man. When justice is done to the common man, it means that it must be a lawful authority, and authority is the rightful authority. It was not a man from the street who was put in the exalted chair of judicial authority. He was duly qualified.

We were short of judges. Many people were requested. Many people refused to accept the offer of district judgeship. So a situation arose when with all the good motive in the world and with the best capacity of the man in the chair, something was done where the letter of the law was not strictly speaking adhered but the spirit of the law was taken good care of. The man was qualified. The man was appointed by qualified people. But the

procedure was not followed. Therefore, some lacuna remains.

Shri Nambiar: It is a constructional provision.

Shri K. C. Sharma: He does not understand the meaning of due process of law. Law consists of two things substantive law and procedural law. Every Constitution has a procedure; every Constitution has in it substantive law. In order to protect yourself from the cold, you have the coat which is also has the crease and is well knit. We must differentiate between procedure and substance. Without substance, no life exists. You must understand that principle.

This question arose in the United States when war was going on. President Lincoln did something which was not in accord with the constitutional provision. He said:

> "To save the Constitution, I must save the nation. To save the limb, I must save the body. If the body goes, the limb goes itself. If the nation is destroyed, the Constitution does not remain".

Modern society is based on equal justice, equal opportunity for development. Liberty and life will be in danger if the right to justice is not given to the subject. Justice in substance, in natural law, is rightly given. The procedure is wrong. Therefore, you have to convince the man whose father was hanged that it was not only natural justice, but it was also legal justice. If you do not proceed, what will happen. The young man says from the top of his house 'My father has been hanged. The judge who hanged him is not really a judge. Therefore, I am not going to suffer the wrong. A grievous wrong has been done to me." What is the result? The result is revolution. Do you want that peace should not be there in the country (*Interruptions*). We want peace and prosperity. Therefore, for the good of the people, these amendments must be carried out.

With regard to constitution, I may read what a Supreme Court Judge has said:

> "....a constitution intended to endure for ages to come, and consequently to be adopted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change entirely the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly...."

The principle is that no constitution can be so framed at to meet all requirements for all times. Consistent with the exigencies of the situation, the constitution must change and it must serve the needs of the people. Where the letter of the constitution and the common weal of the common man stand against each other, the common weal of the common man must prevail.

I support the Bill.

श्री मधु लिमये (मुंगेर) : आज जो कानून हम पास करने जा रहे हैं वह कोई मामूली कानून नहीं है। संविधान में परिवर्तन करने वाला यह कानून है। आज की बहस के पीछे दो बड़े सिद्धान्त हैं। एक सिद्धान्त यह है कि देश में कानून का और नियमों का राज्य रहेगा या मनमानी, स्वेच्छाचारिता और सिफारिश का राज्य चलेगा। नियमों के बाहर जाकर किसी को मकान देना हो और लाइसेंस में नियमों के खिलाफ जाकर परिवर्तन करना हो या जंजीबार से जो शरणार्थी आया है उसको जो वचन दिया गया है उसके विपरीत उसका माल गैरकानूनी ढंग से रोक लेना हो या संविधान की और नियमों की धाराओं को तोड़कर न्यायपालिका के लिए नियुक्तियां

[श्री मधु लिमये]

करती हो, ये सब कानून की सिलाई के नमूने हैं, नियमहीनता के नमूने हैं ।

जब यह बहस यहां पर आज उठाई गई थी तो कानून मंत्री का यह कम से कम फर्ज था कि जिस सुप्रीम कोर्ट के फैसले को लेकर हम बहस करने जा रहे हैं उसकी कापियां सदस्यों में बंटवाते । जब हम संविधान को दुरुस्त करने वाले कानून पर बहस करने जा रहे हैं तो यह जरूरी था कि सुप्रीम कोर्ट के फैसले को सदस्यों को दिया जाता ।

सुप्रीम कोर्ट के फैसले में क्या क्या बातें हैं। दा बसवाल सुप्रीम कोर्ट के सामने थे। गवर्नर ने एक सिलैक्शन कमेटी की मार्फत उत्तर प्रदेश हायर ज्यूडिशल सर्विस नियमों के मातहत, जो नियुक्तियां की थीं क्या संविधान की धाराओं के मातहत की थीं, उसके अनुकूल की थीं ?

चूंकि इसके बारे में सुप्रीम कोर्ट का फैसला यहां पर नहीं रखा गया था, इसलिए मैंने उसकी नकल प्राप्त की है। मैं उसमें से कुछ जुमले पढ़ना आवश्यक समझता हूं। उत्तर प्रदेश में इन नियुक्तियों को लेकर जो कदम हुआ, उसके बारे में सुप्रीम कोर्ट कहता है :

"It is clear from the Rules that the High Court is practically reduced to the position of a transmitting authority of the lists of suitable candidates for appointment prepared by the Selection Committee."

आगे चलकर सुप्रीम कोर्ट कहता है :

"It clearly demonstrates that the Rules are intended to tie down the hands of the High Court in the matter of consultation."

फिर आगे सुप्रीम कोर्ट ने कहा है :

"As we have noticed earlier, under the Rules the consultation of the High Court is an empty formality...."

The Governor in effect and substance, does neither consult the High Court nor acts on its recommendations, but only consults the Selection Committee or acts on its recommendations. In that view also, the relevant rules are illegal and the appointments made there under are bad."

सुप्रीम कोर्ट के सामने दूसरा सवाल यह था कि जिन व्यक्तियों की नियुक्तियां की गई थीं, उनमें से कुछ व्यक्ति ऐसे थे, जो "जुडिशल" आफ़िसर की व्याख्या में आते हैं या नहीं। उसके बारे में सुप्रीम कोर्ट ने न्यायपालिका और कार्यकारिणी की पृथकता के सिद्धान्त को लेकर साफ़ कहा है :

"The expression 'judicial officers' is a misleading one. It is common case that they belong to the executive branch of the Government though they perform certain revenue and magisterial functions."

और आगे बताया गया है :

"Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in the Chapter VI of Part VI under the heading 'Subordinate Courts'. But at the time the Constitution was made, in most of the States the magistracy was under the control of the executive."

इसलिए सुप्रीम कोर्ट ने यह कहा है कि कार्यकारिणी के जो सदस्य हैं, उनको "जुडिशल आफ़िसर" शब्द में शुमार करना हर तरह से गलत है। इसलिए सुप्रीम कोर्ट का फ़ैसला है :

"We therefore construe the expression "the services" in Clause (2) of Article 233 as Judicial service."

इसलिए जबकि सुप्रीम कोर्ट का यह फ़ैसला है, तब क्या उस फ़ैसले को खत्म करने के लिए संविधान में संशोधन लाना ठीक है ? संविधान के अनुच्छेद 141 में कहा गया है कि सुप्रीम कोर्ट का फ़ैसला सभी अदालतों पर बंधनकारक होगा। अनुच्छद 144 में कहा गया है कि देश के सभी प्राधिकारी सुप्रीम कोर्ट की मदद करेंगे। लेकिन यहां पर हम अपनी शक्ति का दुरूपयोग करके सुप्रीम कोर्ट को खत्म करने की कोशिश करते हैं। कानून मंत्री यह जवाब देंगे कि इस सदन को यह अधिकार है और हम संविधान की धारा के अनुसार यह तरमीम ला रहे हैं। लेकिम यह तो एक तांत्रिक, टेक्निकल, जवाब हो जायेगा। लोकतंत्र का जो सिद्धान्त है, और हमारे संविधान के जो सिद्धान्त है, उसकी इसमें हत्या हो रही है।

आपको याद होगा कि आजादी से पहले जो अदालतों के जज होते थे, उनमें आई० सी० एस० के जज भी नियुक्त किये जाते थे। लेकिन स्वतंत्रता के बाद आई० सी० एस० की जगह पर इंडियन एडमिनिस्ट्रेटिव सर्विस अलग से कायम की गई और यह तय किया गया कि इंडियन एडिमिनिस्ट्रेटिव सर्विस के सदस्य अदालतों पर नहीं बैठेंगे। उसी तरह से संविधान के अनुच्छेद 50 में यह कहा गया है कि कार्यपालिका और न्यायपालिका के अलगाव के पृथकता के सिद्धान्त पर जल्द से जल्द अमल किया जाये।

ये सारी जितनी नियुक्तियां हुई हैं, इनके पीछे किसी न किसी ऐसे आदमी को बढ़ाने का उद्देश्य था, जिसको हमारे संविधान के अनुसार अदालतों तर नहीं बिठाया जा सकता था। इसलिए मैं माननीय मंत्री से यह प्रार्थना करूंगा कि वह इस संविधान के संशोधक विधेयक को पास करवाने के लिए जल्दबाजी न करें। सुप्रीम कोर्ट के फ़ैसले को वह छपवायें या साइक्लोस्टाइल करवायें और उसको सभी सदस्यों में बांटें। हम लोग विधायक हैं, कानून बनाने वाले लोग है, लेकिन जिस फ़ैसले के कारण यह कानून बनाने की आवश्यकता हुई, उस फ़ैसले को सभा-पटल पर रखने या सदस्यों में उसका वितरण करने की आवश्यकता कानून मंत्री ने क्यों नहीं समझी ? इसलिए मैं इस विधेयक का डट कर विरोध करना चाहता हूं और यह सरकार मनमानी स्वेच्छाचारिता और नियमहीनता का जो साम्राज्य फैला रहा है, मैं उसका भी विरोध करता हूं।

अन्त में मैं यह कहना चाहता हूं कि इस लोक सभा का मियाद खत्म हो रही है और फरवरी में नया चुनाव हो रहा है। आज जो स्थिति है ; उसमें वर्तमान लोक सभा और इसमें इन लोगों का जो राक्षसी बहुमत है वह मैं कहूंगा कि लोकमत का सही मानों में प्रतिनिधित्व नहीं करता है। इसलिए अगर किसी संवैधानिक आपत्ति के कारण कोई फ़ैसला, कोई निर्णय या कोई हुकम गैरकानूनी करार दिया जाता है, तो उसको कानूनी करार देने के बारे में यह सरकार कार्यवाही कर सकती है, लेकिन जो नियुक्तयां सुप्रीम कोर्ट की निगाह में संविधान के बरखिलाफ़ हैं, उनको ठीक करने के लिए यह सरकार अपने राक्षसी बहुमत का दुरूपयोग न करे, वर्ना फ़रवरी में उसको इस बात का जनता के सामने जवाब देना पड़ेगा, यह चेतावनी मैं दे देना चाहता हूं।

श्री शिव नारायण (बांसी) : उपाध्यक्ष महोदय, मैं आपका बहुत अनुगृहीत हूं कि आपने मुझ को तीन मिनट का समय दिया। मैं उत्तर प्रदेश को रिप्रेजेन्ट करता हूं। मैंने माननीय सदस्य, श्री नम्बियार, को सुना। मैंने अपने मित्र, श्री नाथपाई को नहीं सुना, लेकिन मैं उनको जवाब देना चाहता हूं कि 1953 से लेकर आज तक मुल्क में उपायंटमेंट्स हुए। हमने ला में यह पढ़ा है कि हर एक स्टेट में हाई कोर्ट जुडिशरी की हाइएस्ट और सुप्रीम

[श्री शिव नारायण]

एथारिटी है। उसके फ़ैसले पर अपील सुप्रीम कोर्ट में होती है। सौलह बरस तक वे लोग बैठे क्या कर रहे थे? इस अवधि में किसी ने भी सुप्रीम कोर्ट में अपील नहीं की। जब हमने उस वीकनैस को पाया, तो हमने गवर्नमेंट को प्रैस किया कि वह इस मामले को देखे, जिसके बाद ला मिनिस्टर ने यह कांस्टीट्यूशन एमेंडमेंट बिल पेश किया है।

मैं श्री नम्बियार को बताना चाहता हूं कि यह सिर्फ़ उत्तर प्रदेश का ही मामला नहीं है। स्टेटमेंट आफ़ आबजेक्ट्स एंड रीज़न्ज़ में दिया हुआ है कि केवल उत्तर प्रदेश में ही नहीं, बल्कि और स्टेट्स में भी ये गड़बड़ियां हैं। केवल उत्तर प्रदेश ही नहीं, बल्कि मैसूर और राजस्थान आदि में भी यह सवाल उठा है।

कांस्टीट्यूशन के आर्टिकल 233 के मुताबिक गवर्नर ने ये एपायंटमेंटस की। चाहे एक जज ने रीकमेंड किया और चाहे पूरे हाई कोर्ट ने रीकमेंड किया, फ़ाइनल एथारिटी गवर्नर था। हर एक जज गवर्नर के द्वारा एपायंट हुआ था। उसको किसी स्ट्रीटमेन ने या श्री नाथ पाई ने या श्री नम्बियार ने एपायंट नहीं किया। यह रिकार्ड मौजूद है कि वे एपायंटमैंट्स गवर्नर के आर्डर से की गई थी। ला मिनिस्टर ने रेप्लाई किया है कि ये एपायंटमेंट्स गवर्नर द्वारा हुई हैं। हाई कोर्ट हमेशा एपायंटमेंट्स के मामले में नहीं बैठेगा। उसको मुकदमे देखने का काम रहता है। हाई कोर्ट ने दो जज दिये।

इसके अलावा जिन लोगों को एपायंट किया गया, उनकी सर्विस सात साल से ज्यादा थी। उनमें से जो सर्विस के आदमी थे, वे भी एबल थे और जो सर्विस के बाहर के आदमी थे, वे भी एबल थे। मेरे मित्र मधु लिमये बड़ा विरोध करते हैं सरकार का लेकिन मैं उन को जवाब देता हूं। उन्हों ने खुद कहा है कि अंग्रेज के जमाने में आई० सी० एस० भी जजेज होते थे, यह उन्होंने कहा और हम रेकमेंड कर रहे हैं उन को जो ला ग्रेज्युएटस हैं। कोई जज बिना ला के नहीं हुआ है। एक मित्र ने कहा हमारे पास कम आदमी मिलते थे जजों के लिए। हमारे ला मिनिस्टर यहां मौजूद हैं, उन्हों ने भी रिफ्यूज किया था जजी के लिए .... (व्यवधान).... सुनिए सुनिए। मान्यवर, नम्बियार साहब अब हाथ हिला रहे हैं। जब जवाब मिल रहा है तो हाथ हिला रहे हैं। केवल उत्तर प्रदेश का सवाल नहीं है और सूबों में भी गड़बड़ी हुई। लेकिन हाई कोर्ट सुप्रीम है हमारे सूबे में। लोअर कोर्टस, डिस्ट्रिक्ट जजेज और फिर हाईकोर्ट। हाई कोर्ट के रेकमेंडेशन पर दो जज अप्वाइंट हुए और आपके एग्जीक्यूटिव का जो ला सेक्रेटरी है तीनों ने बैठ कर कमेटी बनायी। उस ने अप्वाइंट किया। किसी राही ने नहीं अप्वाउइंट किया। किसी चीफ मिनिस्टर ने अप्वाइंट नहीं किया। ओनली टु ब्लेम दि गवर्नमेंट यह सब नानसेंस कहा जाता है। मान्यवर मैं बहुत ईमानदारी से कहना चाहता हूं कि इस कांस्टीट्यूशन के बमूजिब हाईकोर्ट ने कमेटी अप्वाइंट की। हां, सुप्रीम कोर्ट हमारा भान्य है। मैं सुप्रीम कोर्ट का आनर करता हूं, रेसपेक्ट करता हूं। उसके डेसीशन के सामने सिर झुकाता हूं और इसलिए मान्यवर, हम को मजबूर हो कर कांस्टीट्यूशन को बदलना पड़ रहा है क्योंकि सुप्रीम कोर्ट इज दि हाइएस्ट एथारिटी जो हम को ज्ञान देता है ला का और हम को करेक्ट करता है.... (व्यवधान) .... मान्यवर यह मिडिल फेल और दर्जा चार फेल लोग, यह ला का ज्ञान देने चले हैं। ... (व्यवधान) इसलिए मैं आपका अनुगृहीत हूं और कांस्टीट्यूशन अमेंडमेंट का समर्थन करता हूं। उत्तर प्रदेश में आज भी बड़े अच्छे अच्छे ब्रेन हैं और उस अच्छे ब्रेन का एक नमूना यह हमारे ला मिनिस्टर साहब यहां बैठे हुए हैं

Shri Nambiar: Withdraw the Bill.

Mr. Deputy-Speaker: Order, order Shri Banerjee.

Shri S. M. Banerjee: Sir, I oppose the motion of the law Minister and those who supported the Bill. I have moved to amendments. One is that under article 88 of the Constitution, the Attorney-General should be summoned in this House and the House should be given the benefit, the advice, of the Attorney-General. I am told that the Attorney-General is not here and that is why this motion could not be accepted by the House. May I remind you that when a contraversial Bill the Compulsory Deposit Bill came before this House, the House in its wisdom requested the Speaker that the Attorney-General should be asked to address the House and the Attorney-General did address the House and said that that was a reasonable restriction. Though we did not agree, and we did not agree with his contention, still, taking his word as correct or that it was a correct interpretation of the law, we accepted it as right.

The second motion before the House today, that is moved by me, is that this House resolves that the Constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court. The Attorney-General may not be here, but the Supreme Court is very well here. Why I request that this Bill should be referred to the Supreme Court is for two or three reasons which have been very ably expressed by my hon. friend Shri Nath Pai.

I know the history of this case. It has been argued in this House that this was happening since 15 years. I want to know why the Government did not come forward with an amending Bill or with some provision during these 15 years. Only after the judgment of the Supreme Court when they heard that all these appointments were illegal, irregular and not in accordance with the various provisions of the Constitution that they rose from slumber. We know that Kumbhakarana used to sleep for 10 years at a stretch, and just like that, the Law Minister has risen after 10 years of sleep or 15 years of sleep. He is the big brother of Kumbhakarana. Naturally I have every feeling, and justifiably, that this is being done simply to whitewash the misdeeds of the Uttar Pradesh Government.

My hon. friend Shri Sheo Narain whom I consider to be Mr. Lok Sabha (*Interruption*) said that the Governor has taken a decision. Perhaps he does not know that the Government takes a decision on the advice of somebody. Ignorance is no virtue. That is why I say that something wrong has been done. I would request the hon. Minister to throw some light on the various points.

Now, what are the facts? All the sessions courts in Uttar Pradesh are functioning as usual. The 11 district judges appointed by direct recruitment in the past are also working as district judges even after the pronouncement of the Supreme Court decision. Only those persons who were appointed during the pendency of the appeal before the Supreme Court after the stay orders were vacated by the Supreme Court and who were parties to the writ are not working. I would request the attention of the hon. Law Minister to this judgment of the Full Bench in the case of *Jaikumar* vs. *the State*. There, the validity was questioned, but the Court held that any order passed by any district judge who was not appointed in accordance with the provisions of the Constitution was invalid, on the basis of a innumerable decisions in England, the USA and Canada where it has been held that a *de facto* judge cannot be questioned because of the want of valid appointment. I am not a lawyer. I would request the hon. Minister to throw more light on this: whether this

[Shri S. M. Banerjee]

House validates or it does not validate, whether on such flimsy grounds this Constitution can be tampered or tinkered with. The Constitution is being amended now for the 23rd time, and if this Government remains in power, I am sure all the articles of the Constitution will be amended and it will result in a new Constitution. What was the necessity? Was there no other remedy? I feel that this is being done to show favour to some of these judges who were appointed illegally and wrongfully and irregularly.

I, therefore, oppose the Bill and I request the hon. Minister to kindly explain to this House why he cannot possibly refer it to the President for getting the opinion of the Supreme Court, or why this House should not wait for the Attorney-General to come and express his opinion on this. It will be a sad commentary on our judiciary; it will be a sad commentary on parliamentary democracy, if we do not get the opinion of the higest law officers of the country.

With these words, I oppose this Bill and I request the hon. Minister to kindly throw some light on the two motions which I have moved. If he has valid reasons for opposing them, let them put forward those reasons. I will be convinced; if he cannot show any reasons, I am sorry I will not accept this Bill.

16 hrs.

Shri G. S. Pathak: Sir, I entirely agree with Mr. Vidyalankar that we should be very careful when we amend the Constitution. But it has happened in the history of some democracies where there is a written constitution that for some period after the Constitution is framed, difficulties are discovered, complicated questions arise and matters come to light which could not be envisaged at the times the Constitution was framed. In such situations for a certain period amendments would be made in the Constitution until important provisions of the Constitution become clarified. If a person says that 'posting' used in the Constitution would cover 'transfer' could it be so unreasonably wrong that it could be said that he was not acting *bona fide*? But if after 15 years, the Supreme Court says 'posting' does not include 'transfer' within the meaning of the Constitution and that creates administrative difficulties of a very great magnitude, what is to be done except amending the Constitution?

If for 15 years, consultation with the High Court is understood to mean consultation with a selection committee and the selection committee's result being transmitted by the High Court itself is considered as sufficient consultation, as there anything so unreasonable in it that you can impute negligence to the Government or say that the Government was not acting *bona fide*, when the High Court was also a party to this practice? It was the High Court which transmitted—to use the language of the Supreme Court—the result of the selection committee. Those who have read the judgment would note that implied approval of the High Court is also mentioned there. Therefore, was it so unreasonable that the High Court and Government should have interpreted the Constitution in this manner and held that consultation held in this manner would be perfectly constitutional? The High Court itself decided that the practice was constitutional. If an interpretation made by the Supreme Court which is binding on everybody creates administrative difficulties, can you say that the amendment of the Constitution is sought in a light-hearted manner?

I submit that the objections that have been raised are not valid. The move for reference to a select committee, calling the Attorney-General knowing that he is not in the country or reference to the Supreme Court—all these are calculated to delay the

solution of the problem, so that there may be confusion in the State. What would the Attorney-General do? Will he say that the two decisions of the Supreme Court are wrong? Has anybody argued that the decisions of the Supreme Court are not the law which binds every Government and every person in the country? Can anybody say that the decisions of the Supreme Court do not apply to all the appointments made of judges since 1954? It is on account of the respect which Government has for the Supreme Court Judgement that we have this amendment here. It is really intended to implement what the Supreme Court has said and to carry out what what they have said. We are merely validating the past judgments, the past appointments and past orders of transfer. We are not introducing anything in the constitution which is contrary to the judgment of the Supreme Court. We are on the other hand, observing the principle laid down by the Supreme Court, viz., executive officers under the name of the judicial officers were not contemplated by the expression 'judicial service' of the State thus we are merely seeking the validity of their judgments, not their appointments. Therefore, it is absolutely necessary that there should be this amendment of the Constitution. In none of the speeches was it said that the consequences I pointed out are not the consequences. All that has been said is that the judgments will not be invalid. What is the answer to this: After 8-8-68, when the law was made absolutely clear by the Supreme Court, has any court in the world laid down that after the exposure of the illegality and constitutional defect, the judgments would still remain legal and the appointments would still remain legal? What answer has been given by the Opposition to this? The controversial period is only the time prior to 8th August. For that period, the Supreme Court itself said in another case that after the discovery, there would be "a serious situation", "invalidity of judgments" and also "rehearing of cases". These were the words used.

What will the Attorney-General do in the face of these Supreme Court judgments? How will reference to the Supreme Court help? We have to frame the questions for the reference. The questions will be identical with those already answered by the Supreme Court. The Supreme Court can refuse to answer the questions even on reference. It is not possible to frame any question which has not been already answered by the Supreme Court in its judgments. Shall we refer the question whether 'transfer' will be included in 'posting'? The Supreme Court will say that they have already decided it. Shall we refer the question about the significance of the expression 'consultation with the High Court or recommendation by the High Court'? The Supreme Court will say, "we have already said it in so many words". I quoted the operative part of the judgment in Chandra Mohan's case. All the appointments under these rules are void. These rules are unconstitutional. Only a few cases were before the Supreme Court. Mr. Nath Pai said four. There were really six. That does not matter. The Supreme Court has got a dual function. It decides cases between parties and it also lays down the law for the country which would apply to all similar cases to which that law could possibly apply. It is that law which governs all other appointments in U.P.

I will answer Mr. Nath Pai's question.

He put me a question. He asked, is there no other way of solving this problem and validating the appointments and judgments. I can assure this House that I have devoted considerable attention to this problem. When there is a constitutional defect in any act of the Government that defect canont be removed except by a constitutional amendment. If the defect

[Shri G. S. Pathak]

had arisen by reason of non-compliance of a statute passed by the Parliament that defect could be removed by another statute made by Parliament, but if the defect arises as a result of non-compliance with the Constitution, itself, there is no lawyer who has told me that that defect could be removed except by a constitutional amendment. If you seek to remove it by any law made by Parliament that law itself will be invalid and will run counter to the Constitution. There are eminent lawyers in this Parliament. I very anxiously waited to see whether there could be suggestion made to remedy this defect except by a constitutional amendment. There is not a single speech, a single suggestion made by any lawyer, even by non-lawyers, which could have shown that without this amendment this remedy could have been reached, or this defect could have been removed. On the other hand, Shri N. C. Chatterjee, who has got vast experience, and Shri Dixit, who has got considerable experience, have shown that the constitutional amendment is the only remedy to meet this situation. Shri Chatterjee has supported the argument by citations of cases. And, I submit, Sir, the Government is quite correct in taking the view that it has taken, namely, that constitutional amendment was the only remedy. If you do not make the constitutional amendment, the result would be great confusion, the District Judges working without any authority, their judgments illegal and so on. And, what would happen to the various writ petitions in which their appointments have been challenged. There are quo-warranto writ petitions also. If these writ petitions are allowed and the judges are parties to these writ petitions, the result will be that the entire judicial work done in this State will be completely obliterated. So far as the judgments prior to the 8th August, 1966 are concerned, they are also in jeopardy. Therefore, Sir, this constitutional amendment is the only remedy.

Mr. Deputy-Speaker: I shall put Shri Banerjee's amendments to the vote of the House. The question is:

> "This House resolves that the Attorney-General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966 and Government should take necessary steps in regard thereto."(6).

The motion was negatived.

Mr. Deputy-Speaker: The question is:

> "This House resolves that the constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court under article 143 of the Constitution on the following question of law:—
>
> Whether the judgments and orders passed by the District Judges appointed by the U.P. Government where appointments have been declared *ultra vires* by the Supreme Court in a recent writ petition are valid or not." (7).

The motion was negatived.

Mr. Deputy-Speaker: I shall now put Shri Yashpal Singh's amendment The question is:

> "That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967." (4).

The motion was negatived.

Mr. Deputy-Speaker: I shall now put the original motion to the vote of the House. The question is:

> "That the Bill further to amend the Constitution of India, be taken into consideration."

This being a Constitution (Amendment) Bill, voting has to be by Division. Let the Lobbies be cleared.

Lobbies have been cleared. The question is:

"That the Bill further to amend the Constitution of India, be taken into consideration."

The Lok Sabha divided:

Division No. 28] AYES [16.28 hrs.

Abdul Wahid, Shri T.
Achal Singh, Shri
Achuthan, Shri
Akkamma Devi, Shrimati
Alagesan, Shri
Alva, Shri A.S.
Alva, Shri Joachim
Anjanappa, Shri
Ankineedu, Shri
Arunachalam, Shri
Azad, Shri Bhagwat Jha
Babunath Singh, Shri
Bal Krishna Singh, Shri
Balmiki, Shri
Barkataki, Shrimati Renuka
Barman, Shri P.C.
Barupal, Shri P.L.
Basappa, Shri
Basumatari, Shri
Beara, Shri
Bhagat, Shri B.R.
Bhagvati, Shri
Bhakt Darshan, Shri
Bhanja Deo, Shri L.N
Bhanu Prakash Singh, Shri
Bhatkar, Shri
Birendra Bahadur Singh, Shri
Bist, Shri J.B.S.
Brajeshwar Prasad, Shri
Brij Basi Lal, Shri
Chakraverti, Shri P.R.
Chanda, Shrimati Jyotsna
Chandak, Shri
Chandrabhan Singh,Dr.
Chandrasekhar, Shrimati
Chandriki, Shri
Chaturvedi, Shri S.N.
Chaudhry, Shri Chandramani Lal
Chaudhuri, Shri D.S.
Chaudhuri, Shrimati Kamala
Chavan, Shri D.R.
Chavan, Shri Y.B.
Chavda, Shrimati Johraben
Das, Shri B.K.
Das, Shri N.T.
Dasa, Shri C.
Deo Bhanj, Shri P.C.
Desai, Shri Morarji
Deshmukh, Shri B.D.
Deshmukh, Shri Shivaji Rao Si
Deshmukh, Shrimati Vimla
Dey, Shri S. K.
Dhuleshwar Meena, Shri
Dighe, Shri
Dixit, Shri G.N.
Dubey, Shri R.G.
Dwivedi, Shri M.L.
Elayaperumal, Shri
Ering, Shri D.
Pirodia, Shri
Gaekwad, Shri Pateshsinharo
Gahmari, Shri
Gairaj Singh Rao, Shri
Ganapati Ram, Shri
Gandhi, Shri V.B.
Ganga Devi, Shrimati
Ghosh, Shri Atulya
Ghosh, Shri N.R.
Ghosh, Shri P.K.
Govind Das, Dr.
Gowdh, Shri Veerappa
Guha, Shri A.C.
Gupta, Shri Badshah
Hansda, Shri Subodh
Hanumanthaiya, Shri
Haq, Shri M.M.
Harvani, Shri Ansar
Hazarika, Shri J.N.
Heda, Shri
Hem Raj, Shri
Iqbal Singh, Shri
Jadhav, Shri M.L.
Jadhav, Shri Tulsidas
Jagjivan Ram, Shri
Jamunadevi, Shrimati
Jayaraman, Shri
Jedhe, Shri
Jena, Shri
Jha, Shri Yogendra
Joshi, Shri A.C.
Jyotishi, Shri J.P.
Kadadi, Shri
Kamble, Shri
Kappen, Shri
Kedaria, Shri C.M.
Keishing, Shri Rishang
Khanna, Shri P.K.
Kindar Lal, Shri
Kisan Veer, Shri
Kotoki, Shri Liladhar
Koujalgi, Shri H.V.
Kripa Shankar, Shri
Kripalani, Shri J.B.
Krishna Shri M.R.
Krishnamachari, Shri T.T
Krishnapal Singh, Shri
Kureel, Shri B.N.
Lalit Sen, Shri
Laskar, Shri N.R.
Laxmi Bai, Shrimati
Lonikar, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahida, Shri Narendra Singh
Mahishi, Dr. Sarojini
Malaviya, Shri K.D.
Mali Mariyappa, Shri
Mallick, Shri Rama Chandra
Mandal, Dr. P.
Mandal, Shri J.
Mandal, Shri Yamuna Prasad
Maniyangadan, Shri
Mantri, Shri D.D.
Marandi, Shri
Masuriya Din, Shri
Matcharaju, Shri
Mathur, Shri Harish Chandra
Mathur, Shri Shiv Charan
Mehdi, Shri S.A.
Mehrotra, Shri Brai Bihari
Mehta, Shri J.R.
Melkote, Dr.
Mengi, Shri Gopal Datt
Menon, Shri Krishna
Menon, Shri Govinda
Minimata, Shrimati
Mirza, Shri Bakar Ali
Mishra, Shri Bibhuti
Misra, Shri Bibudhendra
Mishra, Shri M.P.
Mishra, Shri Mahesh Dutta
Misra, Shri Shyam Dhar
Mohammad Yusuf, Shri
Mohanty, Shri Gokulananda
Mohsin, Shri
Morarka, Shri
More, Shri, K.L.
Mukerjee, Shrimati Sharda
Munani, Shri David
Murthi, Shri B.S.
Murthi, Shri M.S.
Muthiah, Shri
Naidu, Shri V.G.
Naik, Shri E.J.
Naik, Shri Maheswar
Naskar, Shri P.S.
Nayak, Shri Mohan
Nigam, Shrimati Savitri
Niranjan Lal, Shri
Pande, Shri K.N.
Pandey, Shri K.N.
Pandey, Shri Vishwa Nath
Pandit, Shrimati Vijay Lakshmi
Panna Lal, Shri
Pant, Shri K.C.

Patel, Shri Chhotubhai
Patel, Shri N.N.
Patel, Shri P.R.
Patel, Shri Rajeshwar
Patil, Shri D.S.
Patil, Shri J.S.
Patil, Shri M.B.
Patil, Shri S.B.
Patil, Shri S.K.
Patil, Shri T.A.
Prabhakar, Shri Naval
Pratap Singh, Shri
Puri, Shri D.D.
Raghuramaiah, Shri
Rai, Shrimati Sahodra Bai
Raj Bahadur, Shri
Raja, Shri C.R.
Rajdeo Singh, Shri
Raju, Shri D.B.
Ram, Shri T.
Ram Sewak, Shri
Ram Subhag Singh, Dr.
Ram Swarup, Shri
Ramdhani Das, Shri
Ramshekhar Prasad Singh, Shri
Rananjai Singh, Shri
Rane, Shri
Ranga Rao, Shri
Ranjit Singh, Shri
Rao, Shri Jaganatha
Rao, Shri Muthyal
Rao, Shri Rajagopala
Rao, Shri Ramapathi
Rao, Shri Rameshwar
Rao, Shri Thirumala
Raut, Shri Bhola
Rawandale, Shri
Ray, Shrimati Renuka
Reddi, Dr. B. Gopala
Reddiar, Shri
Reddy, Shri H.C. Linga
Reddy, Shri Narayan
Reddy, Shri Surender
Reddy, Shrimati Yashoda
Sadhu Ram, Shri
Saha, Dr. S.K.
Sahu, Shri Rameshwar
Saigal, Shri A.S.
Sanji Rupji, Shri
Saraf Shri Sham Lal
Sarma, Shri A.T.
Satyabhama Devi, Shrimati
Satyanarayana, Shri
Sen, Shri P.G.
Shah, Shrimati Jayaben
Shakuntala Devi, Shrimati
Sham Nath, Shri
Shankaraiya, Shri
Sharma, Shri A.P.
Sharma, Shri D.C.
Sharma, Shri K.C.
Shastri, Shri Ramanand
Sheo Narain, Shri
Shinde, Shri
Shinkre, Shri
Shivananjappa, Shri
Shree Narayan Das, Shri
Shyamkumari Devi, Shrimati
Siddananjappa, Shri
Siddiah, Shri
Sidheshwar Prasad, Shri
Singh, Dr. B.N.
Singh, Shri D.N.
Singh, Shri K.K.
Singha, Shri G.K.
Sinha, Shrimati Ramdulari
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sinhasan Singh, Shri
Sivaprasadhasan, Shri Ku.
Snatak, Shri Nardeo
Sonavane, Shri
Soundaram Ramachandran, Shrimati
Soy, Shri H.C.
Subbaraman, Shri
Subramanyam, Shri T
Sumat Prasad, Shri
Sunder Lal, Shri
Swaran Singh, Shri
Tahir, Shri Mohammad
Thengal, Shri Nallakoya
Thimmaiah, Shri
Thomas, Shri A.M.
Tiwary, Shri D.N.
Tiwary, Shri K.N.
Tiwary, Shri R.S.
Tripathi, Shri Krishna Deo
Tula Ram, Shri
Tyagi, Shri
Uikey, Shri
Ulaka, Shri Ramachandra
Upadhayaya, Shri Shiva Dutt
Vaishya, Shri M.B.
Varma, Shri Ravindra
Veerabasappa, Shri
Veerappa, Shri
Venkata Subbaiah, Shri P.
Verma, Shri Balgovind
Verma, Shri K.K.
Vidyalankar, Shri A.N.
Virbhadra Singh, Shri
Wadiwa, Shri
Wasnik, Shri Balkrishna
Yadab, Shri N.P.
Yadav, Shri Ram Harkh
Yadava, Shri B.P.

NOES

Khan, Shri Shahnawaz
Roy, Shri Bishwanath

The Deputy Minister in the Ministry of Labour, Employment and Rehabilitation (Shri Shahnawaz Khan): Sir, I have voted wrongly, I am for "Ayes".

Shri Bishwanath Roy (Deoria): Sir, I have also voted wrongly. I am also for "Ayes".

Mr. Deputy-Speaker: Those corrections will be made.

The result of the division is :

Ayes : — 281
Noes : — 2

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted.

Mr. Deputy-Speaker: Now, we shall take up clause-by-clause consideration of the Bill.

Clause 2— (*Insertion of new article 233A.*)

Amendments made:

(i) Page 2, line 4,—

for "Twenty-third" *substitute*— "Twentieth". (2).

(ii) Page 2, lines 12 and 13,—

for "Twenty-third" substitute—

"Twentieth". (3).

(Shri G. S. Pathak).

Mr. Deputy-Speaker: The question is:

"That clause 2, as amended, stand part of the Bill.".

The Lok Sabha divided:

Division No. 27] **AYES** **[10.23 hrs.**

Abdul Wahid, Shri T.
Achal Singh, Shri
Achuthan, Shri
Akkamma Devi, Shrimati
Alagesan, Shri
Alva, Shri A. S.
Anjanappa, Shri
Ankineedu, Shri
Arunachalam, Shri
Azad, Shri Bhagwat Jha
Babunath Singh, Shri
Bal Krishna Singh, Shri
Balmiki, Shri
Barkataki, Shrimati Renuka
Barman, Shri P. C.
Barupal, Shri P. L.
Basappa, Shri
Basumatari, Shri
Beara, Shri
Bhagat, Shri B. R.
Bhagvati, Shri
Bhakt Darshan, Shri
Bhanja Deo, Shri L. N.
Bhatkar, Shri
Birendra Bahadur Singh, Shri
Bist, Shri J. B. S.
Brajeshwar Prasad, Shri
Brij Basi Lal, Shri
Chakraverti, Shri P. R.
Chanda, Shrimati Jyotsna
Chandak, Shri
Chandrabhan Singh, Dr.
Chandrasekhar, Shrimati
Chandriki, Shri
Chaturvedi, Shri S. N.
Chaudhry, Shri Chandramani Lal
Chaudhuri, Shri D. S.
Chaudhuri, Shrimati Kamala
Chavan, Shri D. R.
Chavan, Shri Y. B.
Chavda, Shrimati Johraben
Dass, Shri B. K.
Das, Shri N. T.
Dass, Shri C.
Deo Bhanj, Shri P. C.
Desai, Shri Morarji
Deshmukh, Shri B. D.
Deshmukh, Shri Shivaji Rao S.
Deshmukh, Shrimati Vimala
Dey, Shri S. K.
Dhuleshwar Meena, Shri
Dighe, Shri
Dixit, Shri
Dubey, Shri R. G.
Dwivedi, Shri M. L.
Elayaperumal, Shri
Ering, Shri D.
Pirodia, Shri
Gaekwad, Shri Fatehsinhrao
Gahmari, Shri
Gajraj Singh Rao, Shri
Ganapati Ram, Shri
Gandhi, Shri V. B.
Ganga Devi, Shrimati
Ghosh, Shri Atulya
Ghosh, Shri N. R.
Ghosh, Shri P. K.
Govind Das, Dr.
Gowdh, Shri Veerasna
Guha, Shri A. C.
Gupta, Shri Badshah
Haneda, Shri Subodh
Hanumanthaiya, Shri
Haq. Shri M. M.
Harvani, Shri Ansar
Hazarika, Shri J. N.
Heda, Shri
Hem Raj, Shri
Iqbal Singh, Shri
Jadhav, Shri M. L.
Jadhav, Shri Tulsidas
Jagjivan Ram, Shri
Jamunadevi, Shrimati
Jayaraman, Shri
Jedhe, Shri
Jena, Shri
Jha, Shri Yogendra
Joshi, Shri A. C.
Jyotishi, Shri J. P.
Kadadi, Shri
Kamble, Shri
Kappen, Shri
Kedaria, Shri C. M.
Keishing, Shri Rishang
Khan, Shri Shahnawaz
Khanna, Shri P. K.
Kindar Lal, Shri
Kisan Veer, Shri
Kotoki, Shri Liladhar
Koujalgi, Shri H. V.
Kripa Shankar, Shri
Kripalani, Shri J. B.
Krishna, Shri M. R.
Krishnamachari, Shri T. T.
Krishanpal Singh, Shri
Kureel, Shri B. N.
Lalit Sen. Shri
Laskar, Shri N. R.
Laxmi Bai, Shrimati
Limaye, Shri Madhu
Lonikar, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahida, Shri Narendra Singh
Mahishi, Dr. Sarojini
Malaviya, Shri K. D.
Mali Mariyappa, Shri
Mallick, Shri Rama Chandra
Mandal, Dr. P.
Mandal, Shri J.
Mandal, Shri Yamuna Pra
Maniyangadan, Shri
Mantri, Shri D. D.
Marandi, Shri
Masuriya Din, Shri
Matcharaju Shri
Mathur, Shri Harish Chandra
Mathur, Shri Shiv Charan
Mehrotra, Shri Braj Bihari
Mehta, Shri J. R.
Melkote, Dr.
Mengi, Shri Gopal Datt
Menon, Shri Krishna
Menon, Shri Govinda
Minimata, Shrimati
Mirza, Shri Bakar Ali
Misra, Shri Bibudhendra
Mishra, Shri M. P.
Misra, Shri Mahesh Dutta
Misra, Shri Shyam Dhar
Mohammad Yusuf, Shri
Mohanty, Shri Gokulananda
Mohsin, Shri
Morarka, Shri
More, Shri K. L.
Mukerjee, Shrimati Sharda
Munzni, Shri David
Murthi, Shri B. S.
Murti, Shri M. S.
Muthiah, Shri
Naidu, Shri V. G.
Naik, Shri D. J.
Naik, Shri Maheswar
Naskar, Shri P. S.
Nayak, Shri Mohan
Nigam, Shrimati Savitri

Niranjan Lal, Shri
Pande, Shri K. N.
Pandey, Shri R. S.
Pandey, Shri Vishwa Nath
Pandit, Shrimati Vijay Lakshmi
Panna Lal, Shri
Pant, Shri K. C.
Patel, Shri Chhotubhai
Patel, Shri N. N.
Pat l, Shri P.R.
Patel, Shri Rajeshwar
Patil, Shri D. S.
Patil, Shri J. S.
Patil, Shri M. B.
Patil, Shri S. B.
Patil, Shri S. K.
Patil, Shri V. T.
Prabhakar, Shri Naval
Pratap Singh, Shri
Puri, Shri D. D.
Raghuramaiah, Shri
Rai, Shrimati Sahodra Bai
Raj Bahadur, Shri
Raja, Shri C. R.
Rajdeo Singh, Shri
Raju, Shri D. B.
Ram, Shri T.
Ram Sewak, Shri
Ram Subhag Singh, Dr.
Ram Swarup, Shri
Ramdhani Das, Shri
Rameshekhar Prasad Singh, Shri
Rananjai Singh, Shri
Rane, Shri
Ranga Rao, Shri
Ranjit Singh, Shri
Rao, Shri Jaganatha
Rao, Shri Muthyal
Rao, Shri Rajagopala
Rao, Shri Ramapathi
Rao, Shri Rameshwar
Rao, Shri Thirumala
Raut, Shri Bhola
Rawandale, Shri
Ray, Shrimati Renuka
Reddi, Dr. B. Gopala
Reddiar, Shri
Reddy, Shri H. C. Linga
Reddy, Shri Narayan
Reddy, Shri Surender
Reddy, Shrimati Yashoda
Roy, Shri Bishwanath
Sadhu Ram, Shri
Saha, Dr. S. K.
Sahu, Shri Rameshwar
Saigal, Shri A. S.
Sanji Rupji, Shri
Saraf, Shri Sham Lal
Sarma, Shri A. T.
Satyabhama Devi, Shrimati
Satyanarayana, Shri
Sen, Shri P. G.
Shah, Shrimati Jayaben
Shakuntala Devi, Shrimati
Sham Nath, Shri
Shankaraiya, Shri
Sharma, Shri A. P.
Sharma, Shri D. C.
Sharma, Shri K. C.
Shastri, Shri Ramanand
Sheo Narain, Shri
Shinde, Shri
Shivananjappa, Shri
Shree Narayan Das, Shri
Shyamkumari Devi, Shrimati
Siddananjappa, Shri
Siddiah, Shri
Sidheshwar Prasad, Shri
Singh, Dr. B. N.
Singh, Shri D. N.
Singh, Shri K. K.
Singha, Shri G. K.
Sinha, Shrimati Ramdulari
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sinhasan Singh, Shri
Sivapragbassan, Shri Ku.
Satak, Shri Nardev
Sonavane, Shri
Sounderam Ramachandran, Shrimati
Soy, Shri H. C.
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Sunder Lal, Shri
Swaran Singh, Shri
Tahir, Shri Moha
Thengal, Shri Nallakoya
Thimmaiah, Shri
Thomas, Shri A. M.
Tiwary, Shri D. N.
Tiwary, Shri K. N.
Tiwary, Shri R. S.
Tripathi, Shri Krishna Deo
Tula Ram, Shri
Tyagi, Shri
Uikey, Shri
Ulaka, Shri Ramachandra
Upadhyay, Shri Shiva Dutt
Vaishya, Shri M. B.
Varma, Shri Ravindra
Veerabasappa, Shri
Veerappa, Shri
Venkatasubbaiah, Shri I
Verma, Shri Balgovind
Verma, Shri K. K.
Vidyalankar, Shri A. N.
Virbhadra Singh, Shri
Wadiwa, Shri
Wasnik, Shri Balkrishna
Yadab, Shri N. P.
Yadav, Shri Ram Harkh
Yadava, Shri B. P.

NOES

Bade, Shri
Banerjee, Shri S. M.
Dwivedy, Shri Surendranath
Kapur Singh Shri
Nambiar, Shri
Nath Pai, Shri
Raghavan, Shri A. V.
Ranga, Shri
Swamy, Shri Sivamurthi
Yadav, Shri Ram Sewak

श्री मधु लिमये: उपाध्यक्ष महोदय, मशीन में कुछ खराबी है। मेरा हां में वोट आ गया है। मैं ने न के लिए वोट दिया है।

श्री विभूति मिश्र: जब मैं दबाने लगा तो इन्हों ने बटन को छोड़ दिया। मेरा वोट हां में गिन लिया जाए।

Shri Basappa (Tiptur): I had pressed the button but my vote has not come. I am for "Ayes".

Shri D. C. Sharma: Shri Nanda's machine is out of order.

Mr. Deputy-Speaker: These corrections would be noted and made.

The result of the division is:

Ayes : 279.

Noes : 10.

The motion is carried by a majority of the total membership of the House

and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1— (*Short title.*)

Amendment made:

Page 1, line 3,—

for "twenty-third" *substitute*—

"Twentieth". (1).

(*Shri G. S. Pathak*)

Mr. Deputy-Speaker: The qusetion is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

Shri G. S. Pathak: Sir, I move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: Motion moved:

"That the Bill, as amended, be passed."

Shri Nath Pai: Mr. Deputy-Speaker, Sir, I beg to register once again our protest against this kind of tampering of the Constitution. I tried to see that the Law Minister will be replying at least to one of the valid points that we have been trying to raise. It was a pity . . .

Shrimati Savitri Nigam (Banda): He has replied.

Shri Nath Pai: Madam, perhaps if you pay more attention, you will know the difference between a reply and the appearance of a reply.

Sir, we had tried to point out to him that he should not take shelter behind the so-called inconvenience that will be caused by the absence of such a law. Again and again Shri Pathak has been trying to take shelter behind the so-called invalidation of the judgements of *de facto* judges whose appointments may be rendered invalid. That is not the law of the country. The law of the country and of countries which follow similar systems of law is very clear. Once an appointment is *de facto*, every act exercised by the appointee, the *de facto* judge, is a valid thing till it is directly challenged in a *quo warranto*. That was the only point he accepted but again and again he has been creating a fear psychosis in the House and trying to get the consent of the House. It is not a willing consent of Parliament.

I want to raise two pleas at this late stage. I know what will happen to them and what will be the fate of these pleas. We tried to argue and he tried to take shelter behind Shri Chatterjee's opinion. But what did Shri Chatterjee say in support of the Government? I want to say that this is a Parliament whose mandate is more or less over. We will all be seeking a renewal of this mandate. At this late hour this Government comes and asks us to do what? Not to pass an ordinary law but to change the basic law of the country. I would say that it is palpably irresponsible not to say that it is dishonest. You have had 15 long years during which you could have sought recourse to this valid method of changing the organic law of the country. You refrained from that and today at the fag-end of this last session of Parliament, you come forward with this proposal to change the organic law of the country.

And what is the argument to mislead the House? It is that if they do not change the Constitution, the judgements rendered by the entire judiciary of UP will be invalidated. I beg to submit respectfully to him that in the judgement of the Calcutta High Court Full Bench in 1912 in Phu'an Prasad Versus the King

[Shri Nath Pai]

Emperor the law is very clearly stated. Whatever happens to an appointment the functions discharged by a judge do not become invalidated by his appointment being subsequently challenged or even held invalid by a court of law. This is an important point.

Shri Pathak has tried to mislead the House. I am sorry to use strong language.

Some hon. Members: No, no.

Shri Nath Pai: What no, no? Do you understand what I say?

An hon. Member: We understand.

Shri Nath Pai: No. Do not pretend that you do.

Shri N. C. Chatterjee quoted what is an elementary book on law for students preparing for the bar in England, namely, Maxwell's code or interpretation. What has that to do with this? That was the only citation. It is a pity that Members voted without caring to listen to their own man. The Law Minister tried to make out a case for the passing of this Bill and there was no case except a false case that if we do not pass this law all the judgements of the UP judiciary will be invalidated and the consequences and suffering of the people of UP will be unimaginable. It is a false plea. It is an untenable argument. I plead, let not the last act of this Parliament be a hurried act, an act which was entered into without proper reflection and mature deliberation.

I would say in conclusion, having raised every single argument to persuade the Law Minister, that I am reminded of this proverb: Argument is exhausted but obstinacy is not won. It was his obstinacy that was prevailing; it was not his judicial sense or scholarship as a lawyer. Ultimately, what prevailed was his loyalty to this party, not his loyalty to the Constitution. This will be recorded as a sad day that we voted an amendment of the Constitution when we hardly had the authority even to pass an Act. I think, the new Parliament will take a fresh look and you will be held answerable to the electorate who will never pardon the fact that you tampered with the sacred law of this country in such a flippant manner.

Shri Nambiar: Mr. Deputy-Speaker, even the passage of this Bill here today is a very narrow one. The minimum that is required is 255 and you managed to get 26 more. At the fag-end of this session and this Parliament you have reduced yourself to this stage and I warn that next time they will not have the opportunity to amend the Constitution at all because they will never get that majority... (*Interruption*). That is the fear why they came forward with this, rushing and are passing this.

After all, what is this amendment? They have tried to amend the Constitution in order to validate the appointment of judges and transfer of 11 judges.

Mr. Deputy-Speaker: You are repeating the argument.

Shri Nambiar: For this they had to make the Parliament amend the Constitution. Therefore it is very sad that they came forward with such a thing at this fag-end of the session and that too by an extension of the session. Today they could manage by some narrow margin through a trick, but it is not proper. This is not correct. The Constitution should not have been tampered with in the manner that they did today.

श्री राम सेवक यादव : उपाध्यक्ष महोदय, कानून मंत्री ने बहस के दौरान में यह कहा कि उन्हें सर्वोच्च न्यायालय की बहुत बड़ी इज्जत है और उस इज्जत को ध्यान में रख कर वह संविधान में यह संशोधन ला

रहे हैं। लेकिन अगर इस को साफ़ तौर से देखा जाये, और मैं समझता हूं कि श्री पाठक इस को बहुत अच्छी तरह से समझते हैं कि जब सर्वोच्च न्यायालय ने इन नियुक्तियों को गैरकानूनी बताया, तो उसके बाद संविधान को संशोधित करने का अर्थ यह होता है कि यह सरकार एक गैरकानूनी काम को कानून बना रही है, यानी जो गैरकानूनी नियुक्तियां हुई थीं, अब वे बनी रहेंगी और वे हटेंगी नहीं। कानून मंत्री ने कहा है कि वह सर्वोच्च न्यायालय का सम्मान कर रहे हैं, लेकिन इस से बड़ा असम्मान सर्वोच्च न्यायालय का और कोई नहीं हो सकता है।

कानून मंत्री ने कहा है कि चूंकि ये नियुक्तियां गैर-कानूनी करार दी गई हैं, इस लिए उन जजों के फैसले भी गैरकानूनी हो जायेंगे। मैं मंत्री महोदय से यह जानना चाहता हूं कि क्या वह प्रिवी कौंसिल या अमरीका की सुप्रीम कोर्ट या किसी अन्य देश की कोर्ट या हमारी सुप्रीम कोर्ट का कोई केस बता सकते हैं, क्या वह इस तरह का कोई फ़ैसला बता सकते हैं कि अगर कोई नियुक्ति गैर-कानूनी करार दी गई, तो उस की वजह से सम्बद्ध जज का फ़ैसला भी गैर-कानूनी हो गया। अगर कानून मंत्री सही मानों में सर्वोच्च न्यायालय का सम्मान चाहते हैं, तो उस के फ़ैसले को उलटने के लिए, उस का फ़ैसला लागू न हो, उस के लिए संविधान में संशोधन न लायें, क्योंकि वह उचित नहीं होगा।

अन्त में मैं यह कहना चाहता हूं कि सर्वोच्च न्यायालय का फ़ैसला अगस्त में हुआ, जिस के बाद चार पांच महीने बीत गए हैं। अब दो महीने में चुनाव आने वाला है, नई लोक सभा अप्रैल में आयेगी। तो कोई आसमान नहीं फट जायेगा, अगर इस मामले में कुछ और देर हो जाये। एक मानी में इस संसद को, इस सदन को, अब इस तरह के आमूल परिवर्तन का या संविधान में संशोधन का अधिकार नहीं है। इस के लिए नया मैंडेट ले कर आना चाहिए।

इसलिए मैं चाहूंगा कि अब भी कानून मंत्री को जनतंत्र की रक्षा के लिए, संविधान की रक्षा के लिए और देश में मनुष्यता और कानून तथा व्यवस्था ठीक बनाए रखने के लिए सदबुद्धि आए और वह इस बिल को वापस ले लें।

Shri S. M. Banerjee: rose—

Shri Bade: I want to say something. This is the Third Reading.

Mr. Deputy-Speaker: Order, order.

The hon. Minister.

Shri S. M. Banerjee: I shall take only one minute, Sir

Shri Bade: We have got a right. This is the Third Reading.

Mr. Deputy-Speaker: No, no. I am calling the Minister. I am sorry I cannot allow.

Shri G. S. Pathak: Why is it—I am putting this question to Mr. Nath Pai—that he waited for 15 long years. (*Interruptions*).

Shri Bade: This is a sad day. We are tampering with the Constitution. I want to know . . . .

Mr. Deputy-Speaker: Order, order.

Shri G. S. Pathak: The practice which was prevailing was unconstitutional. That is number one. Number two is this. Any one who reads the judgment of the full bench of . . . (*Interruptions*).

Mr. Deputy-Speaker: Mr. Bade will resume his seat. I am not allowing him.

Shri Bade: I have got a voice. This is the Third Reading.

Mr. Deputy-Speaker: If he continues, I shall have to ask him to go out.

Shri Bade: I will go out.

Mr. Deputy-Speaker: He may please go out.

Shri Bade: I can go out. I want only my right, Sir. This is the Third Reading.

Mr. Deputy-Speaker: I have asked Mr. Bade to go out. He is disobeying the Chair. I ask him to go out. I am not allowing him. *(Interruptions)*

Shri Ranga (Chittoor): Here is a very important Bill.. *(Interruptions)*.

Shri Surendranath Dwivedy (Kendrapara): In the Third Reading, everybody has a right to speak.

Shri Ranga: I wanted to co-operate with the Chair. I did not rise on my seat because it was already a foregone conclusion. But at the same time some of our members feel strongly, and there is no reason why you should not be generous, why you should not be tolerant or why you should not be reasonable. Heavens are not going to fall if we allow one or two members to speak. He happens to be the Deputy Leader of a Group and you are dealing with him in such a light-hearted manner. You cannot very well ask the Deputy Leader of a Group to go out like this.

Mr. Deputy-Speaker: I have allowed three persons from the Opposition. He has already spoken once and the same arguments are being repeated.

Shri Ranga: Please listen to me, Sir.

Mr. Deputy-Speaker: Yes.

Shri Ranga: As a result of this unnecessary controversy, we have already lost three minutes. He could have finished it by now. Why don't you be patient, Sir? Let him speak for one or two minutes.

Mr. Deputy-Speaker: All right; I will give him one minute.

Shri Bade: This evil will be considered and written in the history as a said Act. This Congress Party are tampering with the pious Constituton. The Constitution is tampered not according to wants or the needs of the people, but to suit their own purposes. *(Interruptions)*.

Mr. Deputy-Speaker: He is repeating his argument.

Shri Bade: They are killing the rights of the people.

Mr. Deputy-Speaker: The hon. Minister.

Shri S. M. Banerjee: I wanted one minute, Sir. I am also a member of this House.

Mr. Deputy-Speaker: Order, order

Shri G. S. Pathak: The case was confined to a period prior to the discovery of the Constitutional defect and those observations were made reserving the position as to what would happen after the exposure of this defect.

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

Let the lobby be cleared.

The Lok Sabha divided:

Division no. 28] AYES [16·43 hrs.

Abdul Rashid Bakshi, Shri	Ankineedu, Shri	Basappa, Shri
Abdul Wahid, Shri T.	Arunachalam, Shri	Basumatari, Shri
Achal Singh, Shri	Azad, Shri Bhagwat Jha	Beara, Shri
Achuthan, Shri	Babunath Singh, Shri	Bhagat, Shri B.R.
Akkamma Devi, Shrimati	Bal Krishna Singh, Shri	Bhagvati, Shri
Alagesan, Shri	Balmiki, Shri	Bhakt Darshan, Shri
Alva, Shri A.S.	Barkataki, Shrimati Renuka	Bhanja Deo, Shri L.N.
Alva, Shri Joachim	Barman, Shri P.C.	Bhanu Prakash Singh, Shri
Anjanappa, Shri	Barupal, Shri P.L.	Bhatkar, Shri

Birendra Bahadur Singh, Shri
Bist, Shri J.B.S.
Brajeshwar Prasad, Shri
Brij Basi Lal, Shri
Chakraverti, Shri P.R.
Chands, Shrimati Jyotsna
Chandak, Shri
Chandrabhan Singh, Dr.
Chandrasekhar, Shrimati
Chandriki, Shri
Chaturvedi, Shri S.N.
Chaudhry, Shri Chandramani Lal
Chaudhuri, Shri D.S.
Chaudhuri, Shrimati Kamala
Chavan, Shri D.R.
Chavan, Shri Y.B.
Chavda, Shrimati Johraben
Das, Shri B.K.
Das, Shri N.T.
Dass, Shri C.
Deo Bhanj, Shri P.C.
Desai, Shri Morarji
Deshmukh, Shri B.D.
Deshmukh, Shri Shivaji Rao S.
Deshmukh, Shrimati Vimla
Dey, Shri S.K.
Dhuleshwar Meena, Shri
Dighe, Shri
Dixit, Shri G.N.
Dubey, Shri R.G.
Dwivedi, Shri M.L.
Elayaperumal, Shri
Firodia Shri
Gaekwad, Shri Fatehsinhrao
Gahmari, Shri
Gajraj Singh Rao, Shri
Ganapati Ram, Shri
Gandhi, Shri V.B.
Ganga Devi, Shrimati
Ghosh, Shri Atulya
Ghosh, Shri N.R.
Ghosh, Shri P.K.
Govind Das, Dr.
Gowdh, Shri Veeranna
Guha Shri A. C.
Gupta, Shri Badshah
Hansda, Shri Subodh
Hanumanthaiya, Shri
Haq, Shri M.M.
Harvani, Shri Ansar
Hazarika, Shri J.N.
Heda, Shri
Hem Raj, Shri
Iqbal Singh, Shri
Jadhav, Shri M.L.
Jadhav, Shri Tulsidas
Jamunadevi, Shrimati
Jayaraman, Shri
Jedhe Shri
Jena, Shri
Jha Shri Yogendra
Joshi, Shri A.C.
Jyotishi, Shri J. P.

Kadadi, Shri
Kamble, Shri
Kappen, Shri
Kedaria, Shri C. M.
Keishing Shri Rishing
Khanna, Shri P.K.
Kindar Lal, Shri
Kisan Veer, Shri
Kotoki, Shri Liladhar
Koujalgi, Shri H.V.
Kripa Shankar, Shri
Kripalani, Shri J.B.
Krishna, Shri M.R.
Krishnamachari, Shri T.T.
Krishnapal Singh, Shri
Kureel, Shri B. N.
Lalit Sen, Shri
Lashkar, Shri N.R.
Lonikar, Shri
Mahadeo Prasad, Shri
Mahadeva Prasad, Dr.
Mahida, Shri Narindra singh
Mahishi, Dr. Sarojini
Malaviya, Shri K.D.
Mali Mariyappa, Shri
Mallick, Shri Rama Chandra
Mandal, Dr. P.
Mandal, Shri J.
Mandal, Shri Yamnuna Prasad
Maniyangadan, Shri
Mantri, Shri D.D.
Marandi, Shri
Masuriya Din, Shri
Matcharaju, Shri
Mathur, Shri Harish Chandra
Mathur, Shri Shiv Charan
Mehdi, Shri S.A.
Mehrotra, Shri Braj Bihari
Mehta, Shri J.R.
Melkote, Dr.
Mengi, Shri Gopal Datt
Menon, Shri Krishna
Menon, Shri Govinda
Minimata, Shrimati
Mirza, Shri Bakar Ali
Mishra, Shri Bibhuti
Misra, Shri Bibhudhendra
Mishra, Shri M.P.
Misra, Shri Shyam Dhar
Mohammad Yusuf, Shri
Mohanty, Shri Gokulananda
Mohsin, Shri
Morarka, Shri
More, Shri K.L.
Mukerjee, Shrimati Sharda
Munjni, Shri David
Murthi, Shri B.S.
Murti, Shri M.S.
Muthiah, Shri
Naidu, Shri V.G
Naik, Shri D.J.
Naik, Shri Maheswar
Naskar, Shri P.S.

Nayak, Shri Mohan
Nigam, Shrimati Savitri
Niranjan Lal, Shri
Pande, Shri K.N.
Pandey, Shri R.S.
Pandey, Shri Vishwa Nath
Pandit, Shrimati Vijay Lakshmi
Panna Lal, Shri
Pant, Shri K.C.
Patel, Shri Chhotubhai
Patel, Shri Man Sinh P
Patel, Shri N.N.
Patel, Shri P.R.
Patel, Shri Rajeshwar
Patil, Shri D.S.
Patil, Shri J.S.
Patil, Shri M.B.
Patil, Shri S.B.
Patil, Shri S.K.
Prabhakar, Shri Naval
Pratap Singh, Shri
Puri, Shri D.D.
Raghuramaiah, Shri
Rai, Shrimati Sahodra Bai
Raj Bahadur, Shri
Raja, Shri C.R.
Rajdeo Singh, Shri
Raju, Shri D.B.
Ram, Shri T.
Ram Sewak, Shri
Ram Subhag Singh, Dr.
Ram Swarup, Shri
Ramdhani Das, Shri
Rameshwar Prasad Singh, Shri
Rane, Shri
Ranga Rao, Shri
Ranjit Singh, Shri
Rao, Shri Jagannatha
Rao, Shri Muthyal
Rao, Shri Rajagopala
Rao, Shri Ramapathi
Rao, Shri Rameshwar
Rao, Shri Thirumala
Raut, Shri Bhola
Ray, Shrimati Renuka
Reddi, Dr. B. Gopala
Reddiar, Shri
Reddy, Shri H.C. Linga
Reddy, Shri Narayan
Reddy, Shri Surinder
Reddy, Shrimati Yashoda
Roy, Shri Bishwanath
Sadhu Ram, Shri
Sahu, Dr. S.K.
Sahu, Shri Rameshwar
Saigal, Shri A.S.
Sanji Rupji, Shri
Saraf, Shri Sham Lal
Sarma Shri A. T.
Satyabhama Devi, Shrimati
Satyanarayana, Shri

Shah, Shrimati Jayaben
Shakuntala Devi, Shrimati
Sham Nath, Shri
Shankaraiya, Shri
Sharma, Shri A.P.
Sharma, Shri D.C.
Sharma, Shri K.C.
Shastri, Shri Ramanand
Sheo Narain, Shri
Shinde, Shri
Shivanarjappa, Shri
Shree Narayan Das, Shri
Shyamkumari Devi, Shrimat
Siddananjappa, Shri
Siddiah, Shri
Singh, Dr. B.N.
Singh, Shri K.K.
Singha, Shri G.K.
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sinhasan Singh, Shri
Sivappraghasam, Shri Ku.
Snatak, Shri Nardeo
Sonavane, Shri
Soundaram Ramchandran, Shrimati
Soy, Shri H.C.
Subbaraman, Shri
Subramanyam, Shri T.
Sumat Prasad, Shri
Sunder Lal, Shri
Swaran Singh, Shri
Tahir, Shri Mohammad
Thengal, Shri Nallakoya
Thimmaiah, Shri
Thomas, Shri A.M.
Tiwary, Shri D.N.
Tiwary, Shri K.N.
Tiwary, Shri R.S.
Tripathi, Shri Krishna Deo
Tula Ram, Shri
Tyagi, Shri
Uikey, Shri
Ulaka, Shri Ramachandra
Upadhyaya, Shri Shiva Dutt
Vaishya, Shri M.B.
Varma, Shri Ravindra
Veerabasappa Shri-
Veerappa, Shri
Venkataubhaiah, Shri P.
Varma, Shri Balgovind
Verma, Shri K.K.
Vidyalankar, Shri A.N.
Virbhadra Singh, Shri
Vyas, Shri Radhelal
Wadiwa, Shri
Wasnik, Shri Balkrishna
Yadab, Shri N.P.
Yadav, Shri Ram Harkh
Yadava, Shri B.P.

NOES

Bade, Shri
Banerjee, Shri S.M.
Bheel, Shri P.H
Dharmalingam, Shri
Dwivedy, Shri Surendranath
Imbichibava, Shri
Kapur Singh, Shri
Kunhan, Shri P.
Limaye, Shri Madhu
Mate, Shri
Mukerjee, Shri H.N.
Nair, Shri Vasudevan
Naskar, Shri P.S.
Omkar Singh, Shri
Pandey, Shri Sarjoo
Raghavan, Shri A.V.
Ramabadran, Shri
Ranga, Shri
Singha, Shri Y.N.
Sivasankaran, Shri
Swamy, Shri Sivamurthi
Utiya, Shri
Verma, Shri S.L.
Vishram Prasad, Shri
Yadav, Shri Ram Sewak
Yashpal Singh, Shri

Mr. Deputy-Speaker: The result of the division is as follows:

Ayes : 274; *Noes* : 26.

Shri Krishan Pal Singh (Jalesar): The machine has failed on my table.

Mr. Deputy-Speaker: That will be noted.

Shri S. M. Banerjee: Shri Raghunath Singh is absent and he has not voted.

An hon. Member: He is a conscientious objector.

Mr. Deputy-Speaker: The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting. So, the Bill, as amended, is passed.

The motion was adopted.

16.43 hrs.

STATEMENT RE-RESIGNATION OF COUNCIL OF MINISTERS IN GOA, DAMAN AND DIU, DISSOLUTION OF LEGISLATIVE ASSEMBLY AND PRESIDENTIAL ORDER THEREON

Mr. Deputy-Speaker: Now, Shri P. S. Naskar may make his statement.

The Deputy Minister in the Ministry of Home Affairs (Shri P. S. Naskar): The Council of Ministers.... (*Interruptions*).

Shri Nambiar (Tiruchirapalli): It was for this that they were called. The job is over and they are all going out. How can we take up the next business now when everyone is going out? This shows very clearly that all these persons were called only for this purpose.

Mr. Deputy-Speaker: If the hon. Member wants he may also go out.

Shri P. S. Naskar: The Council of Ministers in the Union Territory of Goa, Daman and Diu has tendered its resignation and the resignation has been accepted by the President this morning. The President has also made an order under section 51 of the Government of Union Territories Act, 1963 suspending certain provisions of the Act and making certain incidental and consequential provisions including dissolution of the Legislative Assembly. I would like to inform the House of these developments and also lay a copy of the order on the Table of the House. [*Placed in Library. See* No. LT-7514/66].

Shri Nambiar: What is the statement about?

Mr. Deputy-Speaker: It is about Goa.

Shri Nambiar: I thought that it was about *govadh* or cow-slaughter.

16.45 hrs.

POST-GRADUATE INSTITUTE OF MEDICAL EDUCATION AND RESEARCH, CHANDIGARH, BILL

The Deputy Minister in the Ministry of Health (Shri B. S. Murthy): On behalf of Dr. Sushila Nayar, I beg to move:

> "That the Bill to declare the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be an institution of national importance and to provide for its incorporation and matters connected therewith, as passed by Rajya Sabha, be taken into consideration."

The Post-Graduate Institute of Medical Education and Research, Chandigarh, was inaugurated by the late Prime Minister on the 7th July, 1963. It was planned by the then Chief Minister of Punjab as an ambitious project. But after the late Shri Pratap Singh Kairon left, the Punjab Government found it difficult to continue to develop it according to plan owing to the limitation of the State finances. Therefore, the Punjab Chief Minister requested that the institute should be taken over by the Central Government as an institution of national importance. The proposal was acceptable to the Ministry of Health and Family Planning. It was in line with the policy of developing regional institutions for post-graduate education and research in medical education in accordance with the recommendations of the Health Survey and Planning Committee popularly known as the Mudaliar Committee, so as to meet the growing needs of the health services for specialists and teachers all over the country.

16.47 hrs.

[MR. SPEAKER *in the Chair*]

However, the proposal could not be proceeded with on account of financial limitations. With the reorganisation of the Punjab State, the situation had changed on the 1st day of November, Chandigarh became a Union territory and the Post-Graduate Institution of Medical Education and Research at Chandigarh has vested in and become the responsibility of the Central Government, under the Punjab Reorganisation Act, 1966.

Before the reorganisation took place, the Punjab Government proposed that the institute should be made into a statutory body-corporate on the pattern of the All India Institute of Medical Sciences, New Delhi, and given a larger measure of autonomy so that it may be developed as a high-level academic institution, unhampered by departmental procedures This was agreed to by the Central Government, subject to the approval of Parliament.

As in the case of the All India Institute of Medical Sciences, New Delhi, the objectives of the institute at Chandigarh, when set up as an

[Shri B. S. Murthy]

institute of national importance would be:—

(a) to develop a pattern of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education;

(b) to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and

(c) to attain self-sufficiency in post-graduate medical education to meet the country's needs for specialists and medical teachers. The institute already has a national character in the pattern of its staffing. Members of the staff were recruited from all over the country, and admission to the post-graduate courses is open, on merit, to candidates coming from all over the country.

Shri Nambiar: Is there any quota system under which students from South India will get a fair representation there in the matter of admission? Is there any possibility of that?

Shri B. S. Murthy: I have already stated that the students are being selected on merit from all over the country, and I think the hon. Member from the Communist Group will be able to understand it.

Shri Nambiar: One taken out of 100 is also giving representation to the south. But I want due representation according to the number.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jaganatha Rao): On merit.

Shri Nambiar: Merit of course. There we stand second to none.

Shri B. S. Murthy: The Institute at present runs courses leading to M.D., M.S., Ph.D., and B.Sc. (Nursing). It has 133 post-graduate students on its rolls undergoing training in the following nine specialities:—

(i) Surgery
(ii) Medicine
(iii) Ophthalmology
(iv) Abstetrics and Gynaecology
(v) Pathology
(vi) Radiology
(vii) E. N. T.
(viii) Anaesthesiology
(ix) Biochemistry

Clause 13 (a) of the Bill seeks to empower the Institute to provide for undergraduate teaching.

At present the Institute is affiliated to the Punjab University. Clause 23 of the Bill provides that as in the case of the All India Institute of Medical Sciences, New Delhi, the Institute at Chandigarh shall have power to grant medical degrees, diplomas and other academic distinctions and titles. Clause 24 of the Bill further provides that these degrees and diplomas granted by the University shall be recognised medical qualifications for the purpose of the Indian Medical council Act, 1956. In this manner the Institute will function as a high level academic institute and a miniature university of medical sciences. The teaching of humanities will not be ignored. Clause 13 (c) empowers the Institute to provide for the teaching of humanities as well as the sciences allied to modren medicine.

The Institute has been meeting the needs of the Punjab area in the matter of training of various categories of para medical personnel. Clause 29 of the Bill provides that this facility will continue to be made available to the State of Haryana and Punjab as well as the Union Territories of Chandigarh and Himachal Pradesh. The terms on which this and other facilities will be extended will be a matter of negotiations between the parties concerned.

The Institute at Chandigarh has large assets in the shape of land, buildings and equipment valued approximately at Rs. 6.59 crores. Under clause 14 of the Bill these shall vest in the Institute as a body corporate. The expenditure on the Institute will be met largely by grant-in-aid made by the Central Government after due appropriation made by Parliment in this behalf. This provision is analogous to the arrangements that exist in regard to the All India Institute of Medical Sciences, New Delhi. Besides the grant-in-aid given by the Central Government, the Institute will receive contributions from the Government of Punjab and Haryana for the continuance of existing facilities.

As provided in clauses 17 and 19 of the Bill, the Institute will submit its budget and annual report to the Central Government. The Annual Report shall be laid before both Houses of Parliament. The existing terms and conditions of service of the employees of the Institute will be safeguarded under clause 28 of the Bill.

Under clause 31 (1) of the Bill rules will be framed by the Central Government after consultation with the Institute to carry out the purposes of the Act. However, the first set of rules will be framed by the Central Government before the Institute becomes a body corporate.

Under clause 32 of the Bill, the Institute will make its own regulations consistent with the Act and the rules with the approval of the Central Government. However, the first set of regulations will be framed by the Central Government in order to give a start to the Institute. I move.

Mr. Speaker: Motion moved:

"That the Bill to declare the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be an institution of national importance and to provide for its incorporation and matters connected therewith, as passed by Rajya Sabha, be taken into consideration".

Shri D. C. Sharma.

Dr. Chandrabhan Singh (Bilaspur): I have tabled certain amendments to the Bill. Unfortunately . . .

Mr. Speaker: They were not given in time. But I will waive notice and allow him to move them.

Shri D. C. Sharma* (Gurdaspur): I welcome this Bill. I am very happy that the Post-Graduate Institute of Medical Education and Research, Chandigarh, in the Union Territory of Chandigarh, is going to be raised to the status of a national institution.

I do not think the Union Ministry of Health is going out of its way to do so. In all ways and according to all standards and judged by any criteria of medical education and research, this Institute has already been an Institute of national importance. The Ministry is only putting its seal on it which I do not think, was very much needed. But still I am glad that like some other Institutes this is going to be raised to that status which is something which we have got in free India.

When I look back on this Institute—and I have seen it grow with my own eyes—I can recall to my mind the persons who have sought to build it up. There was Dr. Tulsi Das and now there is Dr. Santok Singh Anand, a reputed surgeon, who is known all over India and also outside India.

There are other persons such as Dr. P. R. Chhutani, Dr. J. N. Bery, Dr. P. L. Wahi and other persons. All those persons have built up this institution and it has now even property worth Rs. 6.59 crores. Most of that money has come out of the pockets of the tax payers of Punjab as it is now, Hariana and some parts of Himachal Pradesh. Of course, the Central Government has also been giving some money but it has come mostly out of the revenues of the old Punjab. I feel that Punjab and Hariana are not

[Shri D. C. Sharma]

going to get a fair deal out of this Bill.

17 hrs.

Of course it is said that so far as the student population is concerned, the present arrangement will continue Since it is going to be an all India Institute, appointments would be on merit and persons from the other States of India also would be welcome. They are welcome even now. My friend was putting a question about the other States of India. I can assure him that so far as this institute is concerned, there is no differentiation between the citizen of one State and another State. That happens in the State from which he comes.

Shri Nambiar: At no time it was done in Madras State.

Shri D. C. Sharma: The Medical Institute of Chandigarh under the leadership of Dr. Santok Singh Anand today is a microcasm and mirror of India as it is a marror of India's unity and diversity and of India's teaming population and India's ills. No one who goes there to take the services of the doctors goes back unattended. There is hardly any Punjabi worth the name, poor, or rich, educated or uneducated who has not sometimes availed of these services. This Institute, as was referred to by the hon. Minister, was built by the imagination and the vision of Shri Pratap Singh Kairon.

When I look at the composition of the Institute, I ask myself: is this going to be on the territory of Chandigarh or to float somewhere between Chandigarh and Kanyakumari or Kashmir or Assam. No Institute, either here or anywhere in the world, can grow unless it has roots in the soil. I do not use the word 'soil' in the ordinary sense in which it is used. It must have its roots, say, in Punjab, or in Hariana, or in Chandigarh or in H.P. or in the rest of the country. But I find that the whole power has been taken away by this grabing and grasping Union Health Ministry.

Shri Nambiar: They will finance it also.

Shri D. C. Sharma: They will finance us as they finance you also. But the Hariana Government, the Punjab Government and the H.P. Government will also finance it and some money will come from the Central Government also. They are financing so many other institutions. Why are you jealous of this?

The composition is such that the only person who figures here and who bears any relation to the soil where it is founded is the vice chancellor of the Punjab University. All the others are to come from outside. Our experience is, when you constitute such a body, very few persons take interest or attend meetings, they are not there even to form the quorum. Then, there is the director-general of health services, Government of India. Let him be there; I do not know who that person is. Then, there are three representatives of the Central Government to be nominated. It is going to be a paradise of nominations for the Union Health Ministry. Nothing makes our Union Health Ministry so glad as to have the full-fledged accomplishment of the desire to nominate persons. Then, there are seven persons again to be nominated.

Mr. Speaker: The time recommended is one hour.... (*Interruptions*). I can extend it by one hour and we must finish it within two hours. So, Members should take ten minutes each.

Shri D. C. Sharma: I have so much to say. Four representatives of the medical faculties of India universities and then three members of Parliament.

Shri Nambiar: Give one to the Opposition Member.

Shri D. C. Sharma: I want all the things to be given to the Opposition. I do not bother about the Opposition Members. I say that this Institute is going to have intimate connection with Punjab, Hariana and Himachal Pradesh and also Jammu and Kashmir. People from Kashmir also come for treatment. It is a strange kind of Constitution which the Union Ministry has drawn up keeping all the power of nomination in their hands. This is a new mania which has overcome the Health Ministry. I think this mania is also a disease and for the cure of such a mania also they should go to some medical institute, of international importance. Then again, there shall be a President of the Institute nominated by the Central Government. I think democracy is being sacrified in the composition. Everything is going to be nominated. I know who is going to be nominated; I do not want to mention his name but I know that.

Shri Nambiar: He is yet to be nominated.

Shri D. C. Sharma: Coming events cast their shadow before. The President shall exercise such powers and discharge such functions as are laid down in this Act or as may be prescribed by rules or regulations. There is the next provision; there shall be a Governing body of the Institute which shall be constituted by the Institute in such manner as may be prescibed by regulations: provided that the number of persons who are not members of the nstitute shall not exceed one-third of the total membership of the Governing Body. So, we are always talking of foreign things in our bodies. So many tonic elements are going to be introduced into the body politic of the Governing body of this institute and also into the composition of the institute. I wish the lady Union Minister were here to do something about it. I wanted that the persons who should run this institute should be those who have experience in such institutions as regards the social services, like Dr. Santok Singh, Dr. Chhutani, P. L. Wahi and J. N. Bery and others; they should have been given a chance. They may get a chance as a dole or as alms from the Union Ministry of Health; but they should have been there in their own right to run this institute as successfully as they have been doing before. But unfortunately this has not happened.

I have no reason to take any exception to the objects of the institute. The objects are like the principles of any religion. I am afraid sometimes man like me observe the principles of religion more in the breach than in the performance. The objectives should not be looked upon from that point of view. Of course, the training of teachers is a very good thing. But there are certain things which are peculiar to Punjab and Haryana and Himachal Pradesh and the neighbouring State of Jammu and Kashmir. They should have included in the objectives something which should have told those persons that they are doing research in some of the diseases like goitre, dysentary, etc.

Now, they want to make it an institute in the air, more than an institute which is rooted in the soil where the Punjab is located. Of course, I am very happy to find that they will preserve the status quo so far as the admissions are concerned.

In conclusion I would say that if you want to have an institute of national importance, you should apply to it that imagination, that vision, that perspective, which go well with nationalism. Indian unity and other things, without sacrificing these essential concepts which are necessary in the case of everything. But unfortunately this has not happened, and the most dangerous thing is this; this institute is going to be at the mercy of the Union Health Ministry

[Shri D. C. Sharma]

which may nominate or may not nominate anybody. Everything is kept in the hands of the Union Ministry; therefore, although I welcome this Bill, I wish this is sent to the Select Committee so that some of the obnoxious provisions might be rectified.

श्री बडे (खारगांव) : मैं इस बिल का स्वागत करता हूं । इसमें यह लिखा हुआ

"to declare the institution known as the Post-Graduate Institute of Medical Education and Research, Chandigarh, to be an institution of national importance and to provide for its incorporation and matters connected therewith."

इस चंडीगढ़ के इंस्टीट्यूट को मैंने खुद देखा है । मैं समझता हूं कि वास्तव में यह जो इंस्टीट्यूट है यह नैशनल इम्पोर्टेंस की इंस्टीट्यूट है । सभ प्रान्तों के लोग यहां पढ़ते हैं । जब एडमिशन होता है तो टैस्ट के आधार पर होता है और उस टैस्ट में हर प्राविंस के लड़के जाते हैं और मेरिट पर उनको लिया जाता है । इस वास्ते इस को नैशनल इम्पोर्टेंस की इंस्टीट्यूट डिक्लेयर क्यों करना पड़ रहा है यह मेरी समझ में नहीं आया है । इसकी क्यों जरूरत पड़ी है यह मंत्री महोदय ने नहीं बताया है । हो सकता है कि चंडीगढ़ का जो एक झगड़ा चल रहा है उस की वजह से ऐसा करना जरूरी समझा गया हो । पंजाब और हरियाना बन जाने के बाद इस प्रकार के जो इंस्टीट्यूशन हैं उनका क्या होगा ? इस वजह से गवर्नमेंट ने सोचा होगा कि इतना अच्छा इंस्टीट्यूशन जो है उस को अपने हाथ में ले लेना चाहिए । लेकिन कुछ भी उद्देश्य हो, उन्होंने जो बिल बनाया है वह बिल इस उद्देश्य को लेकर नहीं बनाया है, ऐसा मुझे प्रतीत होता है ।

अभी जो पूर्व वक्ता बोले हैं उन्होंने कम्पोजीशन आफ दी इंस्टीट्यूट की बात को आपके सामने रखा है । इसमें बीस मेम्बर रखे गये हैं । बीस में से लगभग सभी नामिनेटिड हैं । साइंस कांग्रेस जिन सात आदमियों को भेजेगी उन को भी गवर्नमेंट नामिनेट करेगी । ऐसी बात नहीं है कि उनको लेना होगा, इसमें लिखा हुआ है, टू बी नामिनेटिड बाई दी सैंट्रल गवर्नमेंट साइंटिस्टों की जो एसोशियेशन हैं वह जिन आदमियों को भेजेगी उन को तो आपको ले लेना चाहिए था । वहां आपने लिख दिया है कि उनको आप नामिनेट करेंगे ।

"(a) seven persons of whom are shall be a non-medical scientist representing the Indian Science Congress Association, to be nominated by the Central Government".

मैडीकल फैकलटीज आफ इंडियन यूनिवर्सिटीज जिनको भेजेंगे उन के बारे में भी यह लिखा हुआ है कि सैंट्रल गवर्नमेंट उन को नामिनेट करेगी

"(f) four representatives of the medical faculties of Indian Universities to be nominated by the Central Government in the manner prescribed by rules;...."

इसके बाद आपने यह लिखा है कि तीन मेम्बर पार्लिमेंट के होंगे इन में से दो लोक सभा के होंगे और एक राज्य सभा का होगा । इनका इलैक्शन किया जायेगा, यह आपने लिखा है । आपने यह नहीं लिखा है कि टू बी नामिनेटिड बाई दी स्पीकर । इतनी मेहरबानी आपने जरूर कर दी है । आपने लिख दिया है शैल बी इलैक्टिड फ्राम दमसैल्व्ज । स्पीकर पर अगर यह छोड़ दिया जाता कि वह जिन को नामिनेट करेंगे वे जायें तब भी कुछ यह विश्वास करने लायक बात होती । लेकिन आप तब यह भी लिख सकते हैं और अब भी लिख सकते हैं, दैन एक्सैप्टिड बाई गवर्नमेंट । आपको मैं धन्यवाद देता हूं कि आपने यह नहीं लिखा है । इस

गवर्नमेंट से सब कुछ होने की उम्मीद है। यह सब कुछ कर सकती है।

अब आप देखें कि तीन मेम्बरों में से एक राज्य सभा का होगा और दो लोक सभा के होंगे। इसका मतलब यह होता है कि विरोधी दल की फिलहाल जो परिस्थिति है उसमें उसे अपना रिप्रिजेंटेटिव भेजने का मौका नहीं मिलेगा। कोई इसकी सम्भावना नहीं है। तीन होते तो एक हमारा हो सकता था। अब चूंकि दो हैं इस वास्ते विरोधी दल के किसी सदस्य के चुने जाने की सम्भावना नहीं है। पीछे जो इलेक्शन होते रहे हैं उनके आधार पर मैं यह कह रहा हूं।

मैं कहना चाहता हूं कि बाम के बीस जो मेम्बर बनाये हैं इन को आपने नामिनेटिड क्यों बनाया है। इसमें आपने गवर्निंग बाडी की भी व्यवस्था की है। मैं समझता हूं कि जो साइंटिस्ट हैं उन के काम में गवर्नमेंट का हस्तक्षेप नहीं होना चाहिए। इस प्रकार का उसका कन्ट्रोलायन होना चाहिए। कि जिसमें गवर्नमेंट का हस्तक्षेप न हो। आपने क्लाज दस में कहा है :

"10. (1) There shall be a Governing Body of the Institute which shall be constituted by the Institute in such manner as may be prescribed by regulations:"

रेग्युलेशन्ज कौन से हैं, उन को हाउस के सामने नहीं रखा गया है। अगर रखे जाते तो हम उन के बारे में अपना क्रिटिसिज्म दे सकते थे। चूंकि रखे नहीं गये हैं, इस वास्ते नहीं दे सकते। इस प्रकार से तो काम नहीं होना चाहिये।

अभी हमारे पूर्व वक्ता ने कहा कि पंजाब हरियाणा और जम्मू काश्मीर के लोग वहां होने चाहिए। अगर ऐसा होगा तभी यह संस्था आगे बढ़ेगी। आप देखें कि प्राविंशलिज्म बढ़ते बढ़ते कहां तक आ गया है। यह कहा जा रहा है कि वहां के ही लोग इस में होने चाहिए। मैं समझता हूं कि जाते जाते इन्होंने जम्मू काश्मीर का नाम भी इस में लिख दिया।

(SHRI O.C. SHARMA)

इस संस्था में बहुत अच्छा रिसर्च का काम हो रहा है। यहां लूप का रिसर्च हो रहा है। जब मैं वहां गया था तो मैंने इसको देखा था। लूप से कैंसर होता है या नहीं इसके बारे में वहां रिसर्च हो रहा था। अच्छे अच्छे डाक्टर वहां आए हुए थे। इंडियन डाक्टर जो इंटरनेशनल रिप्यूट के हैं, वे आये हुए थे और रिसर्च कर रहे थे.....

अध्यक्ष महोदय आप भी इसी रिसर्च के मुताल्लिक गये थे ?

श्री बड़े मुझे जरूरत नहीं है। नैचुरल लूप मैंने लगा रखा है। लेकिन मुझे इस में इंटिरेस्ट जरूर है। इसका कारण यह है कि जिस तरह से रूपवती भार्या होती है, वह शत्रु होती है इसी तरह से लूपवती भार्या तो नहीं होती है ? इसके बारे में अभी एक सवाल एक मैडीकल कालेज में चला था, इस कालेज की डिबेटिंग सोसाइटी में चला था। जिस तरह से रूपवती भार्या होती है, शत्रु होती है उसी तरह से लूपवती भार्या होती है। क्योंकि इससे कैंसर हो जाता है। इसका प्रतिपादन एक विद्यार्थी ने किया था। उसने इसके बारे में दो तीन पेपर्ज भी पढ़े थे। जब उसको कैंसर हो जाता है तो पैसा खर्च करना पड़ता है। उसके बच्चा पैदा नहीं होता है, इस वास्ते वह शत्रु हो जाती है। खैर यह तो अलग बात है।

कैंसर का रिसर्च वहां हो रहा है। आल इंडिया फेम के डाक्टर वहां जाते हैं। यह इंस्टीट्यूट आल इंडिया इम्पार्टेंस का पहले से है। इस वास्ते यह कहना कि पंजाब, हरियाणा और जम्मू काश्मीर के लोग ही इस में होने चाहिएं ठीक नहीं है। सभी

[श्री बड़े]

इस संस्था का बड़ा आदर करते हैं। यह बहुत अच्छा काम कर रही है। मैं कहता हूं कि जिस तरह से आल इंडिया मैडिकल इंस्टीट्यूट बनी है और जिस तरह से उसका काम चलता है उसी तरह से इसका काम भी चलना चाहिए और इसी प्रकार से इसको भी बनाया जाना चाहिए। यहां बहुत अच्छा काम हो रहा है। इसको और ज्यादा पैसा दिया जाना चाहिए। आपने जो बाडी बनाई है इस पर मुझे आपत्ति है। मैं कहूंगा कि डाक्टरों का जो एसोसिएशन है वह जिन मैम्बरों को भेजे इलैक्ट करके, उनको आपको ले लेना चाहिए और नामिनेशन का झगड़ा नहीं होना चाहिए।

इन शब्दों के साथ मैं इस विधेयक का समर्थन करता हूं।

Dr. Chandrabhan Singh: Sir, I welcome this Bill, but I want to stress that declaring this as an institution of national importance will not serve the purpose. The moment you do so you already take something for granted and that is where the rub comes in. As pointed out by the hon. Mr. Sharma, this institute has been built more or less by the money provided by Sardar Pratap Singh Kairon and a large amount of money has been spent on it. I do not dispute the fact that it is working very well. Its officers are appointed in the highest scale and the pay scales are better than those in the All India Medical Institute in Delhi itself. It is an institute started by the Punjab Government and staffed mostly by people from Punjab. You can declare it as an institute of post-graduate medical education, but it should not be declared as an institution of national importance.

It is declared here that it will serve the purpose of providing the country with teachers. But what has the All-India Institute in Delhi done ? In the discussion on the budget of this ministry, I mentioned the number of post-graduate teachers provided by the Delhi institute. Hardly any post-graduate teachers were provided. They have so far provided only junior teacers like demonstrators tutors and lecturers and the majority of the teachers are from outside. The same thing will hold good here also. The shortage of teachers in the country is to the tune of 4,000. To think that 3 or 4 institutes at Delhi, Chandigarh, Pandicherry, Hyderabad and Madras, will meet the requirements of teachers for the whole country is wrong. The only method to meet the shortage of post-graudate teachers is to upgrade 50 medical colleges which are old, out of the existing 89 medical colleges. By the end of the fourth plan, we will have another 25 colleges. My suggestion is that a total of 2,000 scholarships should be given each year for a period of three years in these 50 colleges and we should give them training for three years. Then you will be able to produce 2,000 teachers yearly after three years' time and by the end of the fourth plan, you may succeed in meeting the shortage.

Secondly, there is vast difference in the pay-scales at the colleges in Chandigarh, Delhi, Bombay, Madras, Calcutta, Lucknow, Patna, etc. In Chandigarh, the pay scales are very high. The Director there goes up to Rs. 3500. I do not grudge it and I welcome it. But teachers of equal importance and calíbre elsewhere are getting just half of it. For instance, in Lucknow the maximum pay of the Director is only Rs. 2000. This vast difference has created a lot of dissatisfaction and disgruntlement. People want to leave those colleges and come over to the one or two colleges which pay high scales. I plead that this difference should be cut down. The difficulty mentioned is shortage of funds. After all, the Central Government is giving all this money. The annual recurring budget of the All-India Institute at Delhi is Rs. 1.30

crores and the budget of the college at Chandigarh is Rs. 90 lakhs. Great Part of the money from the Centre is spent on four or five institutions alone. I plead that all the money should be pooled and the money provided to other colleges should be increased. The Central Government wanted the Lucknow University to hand over the medical college in Lucknow to the centre for post-graduate education, but the Lucknow University did not agree to it, because if you bring an institute body under the Central Government, the whole thing becomes the handmaid of the Central Government. My experience as a member of the institute body of the Delhi Institute is not very happy. As pointed out by the two previous speakers, I want that the members of the institute should be elected on the basis of my amendment which I have given notice of and not nominated by the Central Government.

I plead with the Government to think deeply about this and not to agree to declare this institute as an institution of national importance, because the moment you does, you denigrate the other institutions. What do you mean by an institution of national importance? They are all of very high order and there can be only one or two such institutions. The moment you declare a dozen of them all over the country as institutions of national importance, they lose their importance and they no longer remain institution of national importance. As I said, do declare it as an institute of postgrade education, but not as of an institution of national importance.

Clause 24 says—

> "Notwithstanding anything concontained in the Indian Medical Council Act, 1956, the medical degree and diplomas granted by the Institute under this Act shall be prerecognised medical qualifications for the purposes of that Act and shall be deemed to be included in the First Schedule of the Act."

The Indian Medical Council has been formed by an Act of Parliament and it has very important functions like laying down rules and regulations, the curriculum and syllabus, inspection of lecture theatres and there facilities and giving recognition for awarding degrees and diplomas, etc. This Council is responsible for maintaining the standard of medical education. By this clause 24, you are creating a sort of diarchy. On the one side you have got the institute body and on the other side you have the Medical Council. There will always be this clash which is undesirable. I feel the Medical Council should be represented in the institution body and it should have that power of inspection, examination and recognition. Then only the degrees should be agreed to by the Government. Otherwise, it should not be allowed. With this aim, I have given some amendments.

Mr. Speaker: He can move them during clause by clause consideration.

Dr. Chandrabhan Singh: Yes, Sir.

Shri A. N. Vidyalankar (Hoshiarpur): Sir, I associate myself with the tributes paid to Sardar Pratap Singh Kairon by the Minister and by Mr. Sharma. This institution is really a valuable gift of that able administrator about whose political or administrative views one might hold different opinions, but so far as his zeal and creative genius and vigour were concerned, nobody would disagree that he gave a lot of developmental energy and founded many institutions in Punjab. I also associate myself with the nice remarks of Mr. Sharma about Dr. Tulsi Das who really conceived the idea earlier. When I was holding the Health Portfolio in Punjab, Dr. Tulsi Das came to me and gave his ideas that there should be such an institution for post-graduate education and research. He had very clearcut ideas. He wanted this institution to be conceived in a big way. It was Sardar Pratap Singh's encouragement, his grasp of the idea and the

[Shri A. N. Vidyalankar]

needs of the people that encouraged the founding of this institution and this institution was established.

17.31 hrs.

[Shri Sonavane *in the Chair*]

I was glad Dr. Tulsidas was appointed the first Director of this institute. I know Dr. Tulsidas. I know his ideas. I would suggest to the Minister to make him the President of the governing body. From the very beginning he has been associated with this institute. Other doctors are also there. I think medical men like Dr. Santokh Singh, Dr. Berry, Dr. Chotani and others have made history, have made great contributions to the making of this institute. They are the pride of Punjab. They have given this institution a status which Punjab can feel proud of.

Therefore, I welcome the idea that this institute is being taken over by the Central Government. The new status that the reorganisation Act has given to Chandigarh, the Bill is consistent with that, because automatically all the institutions, that were located at Chandigarh will become the responsibility of the Central Government. It is in the fitness of things that this institute and other institutions that are the responsibility of the Central Government for their management and administration should be properly taken up by the Central Government. Adequate grants should be given for proper maintenance and the whole administration should be done on proper lines. I, therefore, think that this Bill is a very timely one. I fully support it.

But I also agree with my hon. friend Shri D. C. Sharma and I also feel that in the management there is no mention of any representatives from Punjab, Himachal Pradesh and Hariana which are the States that will be most benefited, I include Kashmir also in that. Of course other parts of India also would be benefited, but these are the States that have contributed most in erecting the magnificent building of this institution. Those States have been ignored and no representatives of those States have been included. It may be that while nominating members the Government of India may or may not include any Punjabi, any representative of Hariana or a resident of Himachal Pradesh. Therefore, this is really a great lacuna. I think those who have built up the institution, those who have contributed a lot, those who have conceived the idea of this institution, they should not be just pushed out of the institution altogether. Their representatives should be there. There should also be a representative of the Chandigarh Administration.

With regard to clause 20, it is stated that with regard to pension, provident fund etc. the regulations will be prescribed. I am very much concerned with the employees who are at present in employment there. The clause as it appears to be absolutely innocuous, but I am afraid it should not be that all the regulations, rules etc. should be altered and the present benefits should be taken away or some thing be done which should prejudice the interest of the present employees there. Clause 28 in the proviso says:

> "Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage....".

That is very good. So far as this clause is concerned, the Government has tried to ensure that the employees should not incur any disadvantage. But the proviso ends with these words:

> "Without the prior approval of the Central Government."

This portion I think should be omitted. It creates doubts as if they can change those conditions with the permission of the Central Government. I know how such permissions are ob-

tained. They function in a bureaucratic manner. Sometimes some officer somewhere might conceive the idea that these rules should be changed and then they are changed. I think the conditions of service, employment, pension etc., should not be changed to their disadvantage. The Central Government should not get power under this Act to change those conditions to the disadvantage of the employees. They may improve their conditions. Improvement is already due everywhere. India is progressing everywhere. There is scope for a lot of improvement. But what is the use of saying that these cannot be altered to the disadvantage of the employees without previous approval of the Central Government. That means with the approval of the Central Government they can be altered to the disadvantage of the employees. I strongly protest against that. I think the Minister must move an amendment and remove those words that create doubt and apprehensions in the mind of the employees. These employees have been there from the very beginning doing a lot. They have built up the institution. I have been there several times. Chandigarh falls in my present constituency and being a representative of that area I have seen the institution several times. I know how hard these people are working day and night. They have built up the reputation of this institution. From the Director to the peon all have worked to build up the present reputation of this institute. Therefore, under no circumstances should these conditions be changed to the disadvantage of the present employees. The Central Government should not get any power to change those conditions and they should be absolutely safeguarded.

With these words, Sir, I support this Bill, the principle of the Bill, subject to the suggestions I have made. This is a valuable gift of Sardar Pratap Singh. This will perpetuate his memory. It is also very good that the late Prime Minister Jawaharlal Nehru laid the foundation stone of the institution. That gives lustre to it reputation. I hope this institution in the hands of the Central Government will make further progress and serve the whole area, not only the area in which it is situated but the whole country.

Shri V. B. Gandhi (Bombay Central South): Mr. Chairman, Sir, I must confess, in the first place, that I have not been able to appreciate the argument of Dr. Singh. Perhaps as a distinguished member of the medical profession he knows better, but for us laymen I should think there should be no difficulty in supporting this Bill. In fact, we should welcome it.

After all, what does the Bill want us to do? It wants us to give recognition to this institute, Post-Graduate Institute of Medical Education and Research, as an institution of national importance.

We are not doing anything new. We are not establishing a new institution. The institution is already there in existence. The students are already there. They have been enrolled; they have been receiving education; the facilities for their research have been amply provided and a high level or a high standard of education is being maintained in this institution already.

An expert committee, like the Mudaliar Committee which went into the question of medical education, also has favoured the establishment of a number of such regional institutions. Therefore, as a layman I think that we should wholeheartedly support this measure.

Here in this country we hear time in and time out of the great need for this country to have more doctors. If we really want and if we are sincere in our desire to have more doctors, it is logical that we should have more of these institutions that train and create more doctors of the requisite standard of education.

[Shri V. B. Gandhi]

This Post-graduate Institute of Medical Education and Research is going to be patterned after something which we know, that is, the Medical Institute in Delhi. We must recognise that the two lady ministers, Rajkumariji and the present Minister, Sushilaji, have been doing such a lot to promote this higher standard of medical education. For years we in this country have been borrowing from other countries the advances in medical education and medical science that they have made in their countries. We have been borrowing the results of their researches but as a self-respecting country, I am glad to say, as a result of the continuous efforts of these two lady ministers of the Government of India, we are now in a position where we can look forward to making a return for what we have been receiving from other countries.

Shri D. C. Sharma: Shri Karmarkar also made a very good Health Minister.

Shri V. B. Gandhi: I must thank Professor Sharma for pointing it out to me. I do include my friend, Shri Karmarkar, who was also the Health Minister for many years.

We had to think in those terms. It certainly is not in keeping with the self-respect of any country to be always at the receiving end. There should be a two-way traffic established between India and the other countries on which we have been depending for our new advances.

Finally, it is intended that this new institute should have a certain measure of autonomy so that it can cater to the needs of an institution of higher education and higher research and that it should not be kept in a position to depend upon the ordinary procedures or departmental methods.

So far as the composition of the governing committee is concerned, I think, I am not competent to deal with that.

Shri D. D. Puri (Kaithal): Mr. Chairman, Sir, the Post-graduate Institute of Medical Education and Research in Chandigarh will go down in history as a monument to the spirit of service and foresightedness of Sardar Pratap Singh Kairon. I join in the tribute paid to some eminent men—Dr. Tulsi Das, Dr. Santokh Singh, Dr. Chhotani and others—by Professor Sharma and Shri Vidyalankar who himself, as Punjab's Minister of Health, was actively associated with the establishment of this institute.

I heard with rapt attention the speech of the Minister while moving the Bill and I wondered in my mind as to what exactly this Bill was going to do to this Institute, apart from bestowing on it a very high sounding name. Clause 2 declares:

> "It is hereby declared that the institute known as such and such in Chandigarh is an institute of national importance."

Throughout in his speech he has not tried to make out as to what exactly this change signifies in the working of this institute.

He told us about the curriculum and what subjects are taught there, but what exactly is the institute going to have that it does not have at present, we are still left guessing. As a matter of fact, his complete speech was paraphrasing of the clauses *seriatim* without telling us exactly what the existing state of affairs is and in what precise manner, either in the matter of Budget—are they going to spend more funds upon it?—or in the matter of curriculum, activities, scope or what exactly are they going to do to the institute apart from bestowing this high sounding name under the declaratory clause, clause 2, which says that it is hereby declared as an institute of national importance. I do wish that when the Minister winds up the debate he will spell out in precise terms what the institute

lacks at present and what the institute is going to have after this declaration comes into force.

Professor Sharma has very eloquently found fault with the element of nomination pervading all the way through so far as the governing body of this institute is concerned and he has very rightly pointed out that the Governments of Punjab, Haryana and Himachal Pradesh and the territorial administration of Chandigarh are conspicuous by their absence in it. You do not find them at all in the entire Bill so that even if their representatives are nominated, that will be incidental; that will depend upon the pleasure of the Central Government. They may feel inclined or a little kindly towards the Haryana Government in a particular period and may nominate one or two representatives from Haryana; they may be disinclined so to do at that time of the next batch of appointments and the representatives of the Government of Haryana or Punjab or Chandigarh, as the case may be, may be conspicuous by their absence. I think, he has very rightly pointed out that the representatives of these Governments and the territory of Chandigarh should find a place in the Bill as of right and should not have to depend upon the tender mercies of the Central Government.

In regard to the pay scales it has been stated here that the pay scales in Chandigarh are higher than in some other parts of the country. I do not know that.

*** Dr. Chandrabhan Singh:** They are.

Shri D. D. Puri: I accept that. You cannot really pay enough to a good doctor. But I am extremely apprehensive in regard to this proviso, which is very innocuous looking, that their standards of service etc. and terms of service will not be reduced but it really confers upon the Central Government power to alter the terms of service to the disadvantage of the present employees of the institute. This is most objectionable. I entirely agree with Shri Vidyalankar that this provision should be altered by the deletion of the last few words, namely, "without the previous approval of the Central Government". I am very strongly of the view that the Central Government should not acquire for itself the power to alter the conditions of serce of those who are at present working in the institute. They have no business to ask for that power. I go a step further.

So, even in respect of new entrants or new employees or those who are going to be employed hereafter, Government must give an assurance that their terms of service will, if anything, be better, but certainly not be worse than the terms of service of the present employees. On the one hand we are issuing a declaration and we are issuing a declaration and we are raising the status of the Institute to all-India importance and having issued that declaration, then there is the power, that with the previous consent of the Central Government, you can reduce the emoluments of the present employees and it holds out no assurance whatsoever in so far as fresh recruitments are concerned. I join with Mr. Vidyalankar in saying that the lower grade employees, particularly of this Institute, are even today not paid adequately and there is a case for revision or for upgrading their emoluments, leave alone what any one else is getting elsewhere in the country. We have certain tradition attaching to this Institute and I would urge very strongly that those traditions should be maintained and the Central Government should not ask for any powers to be in a position to reduce or to alter the terms of employment of the employees to the detriment of the employees. This is most objectionable.

Dr. Melkote (Hyderabad): I wholeheartedly welcome this Bill. At the same time I would like to pay my tribute to the able leadership of the then Chief Minister, Mr. Kairon, the Director of Medical Education at that time, Mr. Tulsidas, the able Director,

[Dr. Melkote]

Dr. Anand, Dr. Chukani and several others who had done yeomen service to this Institute.

Under the able leadership of Dr. Lakshmanaswami Mudaliar, who was the Chairman of the Health Survey Planning Committee, of which I happened to be a Member, we visited many of these areas and found to our surprise the tremendous progress that this Institute had made. It struck me very much and I felt that this Institute should be one of the Institutes of national importance. 'National importance' connotes a few ideas. It usually means that it is entirely controlled by the Central Government and in this particular juncture when this Bill has been brought in with the wording 'national' importance', I personally feel that it is entirely due to the fact that Punjab has been split up into Haryana and the present Punjab area, which would include Himachal Pradesh as well. In so doing, what they have done is this. At present the Institute subserves possibly Himachal and the entire area of Punjab alone and maybe, a few students from other States also were being admitted. The Central Government has taken powers in its own hands. It was felt that students from all over India should seek admission and get it in this Institute in order to benefit themselves by the education that they get here. If that is to be done and the admission has to be controlled, it is entirely necessary to see that it is not merely regional. Now these two States are involved and both these States have got to be given the reasonable terms in order that their students get proper admission. If it is regional, the students of that area alone and a few others of the neighbouring area would get admission and not many students from all over India. With national importance, any student from all over India can seek admission provided he has got the merit. That is the most important aspect of this Bill. That is the importance of the wording 'national importance'.

Apart from this, I would like to know this from Dr. Singh who has had experience both at Lucknow and Kanpur as Professor and Director of Medical Colleges. Those Institutes came into existence more than 8 years ago and they have spent lots of money. This Institute has spent Rs. 6·9 crores. Some of these institutes have spent much more than that. I would like to know how many post-graduates are being prepared. They are also post-graduate institutes with long-standing and they have got traditions. I would like to know how many of these post-graduates are being manufactured in those institutes.

This All India Institute of Medical Sciences, Delhi, of which I also at one time happened to be a Member, was started in 1954. When it was started in 1954, I found to my surprise that they had made it possible for admission for undergraduates of about 40 students from all over India; then it was raised to 50 and it was not increased further for the simple reason that they should subserve as a nucleus to train Professors who get trained there—post-graduates— for teaching purposes. It is not an undergraduate college at all, and that institution does not sub-serve that purpose. Even then the provision was Rs. 12 crores and we have spent that amount of money and we feel that that amount is not sufficient. During the 15 or 16 years that have been spent, the experience is this. If we have got to train new graduate, he has got to undergo the basic medical sciences course, then five years, then the housemanship, and then another two or three years for post-graduate. You may bring in Professors from all over India to train, but how many you can train? Each Professor cannot train more than 3 or 4 or 5 and even that number will be very big for an Institute of this type which is developing, which is just in the making. During this period, it has trained more than 280 per annum. That is approximately the figure that the booklet gave last time in the

Annual Report. I feel that the All India Medical Institute has done wonderful work.

Progress in medical sciences is very slow. There has to be a tradition, there has to be progress, but progress with caution. We cannot go rapidly. Today I read in the papers that in Soviet Russia they are decapitating the head of a dog and are putting it on another animal. What would be the feeling of that animal? Would it be the feeling of the dead body of another animal or would it be the mind of this particular animal? These are the considerations. This is the rate of progress which has to be made. The All India Institute of Medical Sciences is doing exceedingly well and I should say that within the short space of 7 to 8 years—it may be 12 years, but we should say that for post-graduate education it is only, 5, 6 or 7 years—you cannot make further progress in that. From that point of view, many of these institutions like those in Madras or Bombay which have come into existence more than 100 or 110 years ago, how many are they producing? In each of these regions they wanted to have regional medical colleges and the Mudaliar Committee mentioned this. But the regional medical colleges would take students only from the neighbouring four or five States and a national college of this importance will invite students from all over India. That is the importance of this.

Punjab has contributed this money. Dr. Santokh Singh has built it up. That has earned a reputation. That has got wonderful professors and I do not see why people in the south should not go and get the benefit of this institution. Therefore, I most heartily welcome this wording 'national importance'.

Now I come to pay scales. My friend said that it is not possible to pay adequately to any medical man. That is my first feeling. It is not possible. If these people in Punjab are today getting in this institute Rs. 3500. I see no reason why it should be brought down. The moment it is mentioned 'national importance' and controlled by the Central Government, the Audit and Accounts will come in the way, the Finance Department will come in the way and see that the pay scales of new entrants in the Institute conform to the pay scales obtaining at other places. It is most obnoxious. The standard of the institute would go down in that case and this will not become a national institute though it might bear that name. I personally feel that if we have got to maintain the standard, this kind of control over the pay scales should not be there, and the present system should be maintained.

18 hrs.

As regards the money to be spent over the institute, provision has been made for contribution from Punjab, Haryana and other places. What we intend today under this Bill is to give them about Rs. 60 to 70 lakhs. I would submit that this is a meagre sum. We want to maintain the standard of this institute, and call it a university and permit it to give degrees and train people for post-graduate degree from all over India, and still we want to give them only Rs 60 to 70 lakhs. I know that many of the universities are paying to the medical colleges in every State much more money on some of these colleges, the universities are spending more than Rs. 2 to 3 crores. Therefore, I submit that this sum of Rs. 60 to 70 lakhs is a meagre sum. I do not know where the institute will find the rest of the money from and I personally have not been able to understand it. If we want to maintain the standard of education, the present standard will have to be maintained completely.

With regard to the question of elections, whether it should be a person from the Medical Council of India or some more people should be elected and so on, I would like to differ only on this issue. If we have got to build up an institute, for the first ten or

[Dr. Melkote]

fifteen years we have got to have competent men who will not be troubled by these methods of political intrigue which are there today in many of the existing institutions. From that point of view, the idea of nomination is exceedingly welcome, and I welcome this Bill and support it.

श्री वाल्मीकी (खुर्जा) : समापति जी, मैं इस विधेयक का स्वागत करता हूं . . .

Mr. Chairman: The hon. Member may continue his speech on the next day.

18.02 hrs.

PAY SCALES OF TEACHERS*

श्री प्रकाश वीर शास्त्री (बिजनौर) : समापति जी, अभी कुछ दिन पहले इसी सदन में छात्रों के असन्तोष पर चर्चा हुई थी। उसी तस्वीर का दूसरा पहलू अध्यापक भी है जिसके हाथों में छात्रों के भाग्य के निर्माण का दायित्व इस देश ने सौंपा है। कुछ दिनों से सरकार को एक आदत होती जा रही है कि कोई भी काम उसे न करना हो तो आश्वासन इतने मीठे शब्दों में जरूर दे देना चाहिए कि जिससे दूसरे व्यक्ति शब्दों को सुनकर ही प्रसन्न हो जायें।

Dr. Melkote (Hyderabad): May I say one thing? I have never raised the question of quorum and so on. But I have got to do it now. Of what use is a debate or discussion with only four or five Members being present in the House?

Mr. Chairman: Shri Prakash Vir Sharstri may resume his seat because there is no quorum. The bell is being rung—Still, there is no quorum. The bell is being rung for a second time.

Even now, there is no quorum. So, the House will now stand adjourned and meet again at 11 A.M. on Monday, the 5th December, 1966.

18.04 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, December 5, 1966/Agrahayana 14, 1888 (Saka).

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*Half-an-hour-discussion.

GMGIPND—LS II—2374 (Ai) LSD—10-1-67—970.